G. P. Woodruff
Litchfield
Ct

Contents

Law Merchant

Bills of Exchange

3 A bill of exchange is an order to a person addressed by one person to another requiring him to pay a sum of money to a third person, or to order, or to bearer, or to a person specified or to order or to bearer. 1 Ld. Raym. 743 Cro. Eliz. 90 2 Str. 1166. 7 Mod. 135 Ld. R. 743

A note to deliver [illegible] "Bearer" to order of [illegible] or bearer, [illegible] 47. 107. 2 Lev. 190 [illegible]

[illegible] A bill of exchange is a security payable to order or to bearer. The holder of a bill of exchange is entitled to receive the money from the person specified in the bill. The person specified is generally called a drawee, and the person to whom it is payable is called the payee. The person who gives the order is called the drawer. [illegible] 1 Hy. Bl. 580, 602 Ch. 13, 223

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[illegible] differs from a common [illegible] [illegible]

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& B

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[illegible]

[illegible]

[illegible]

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[illegible]

9 [illegible] Post 28

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[illegible]

[illegible] Kyoto

[illegible]

10 [illegible]

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15 Authority by Procuration — an agent may be constituted for a business by bill of attorney or by deed, for a sale or exchange of a deed. No person can make a deed an agent without a bill or deed Ch. 24,10 [illegible] 7 H.R. 289 3 H.R. 757 [illegible] 111

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incapable

17

18

Chit 30.56.75. Jul 12b. ~~LaRaylf5~~

~~Lidd.~~

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19

20

21

Post 23

22

23

[illegible]

24 [illegible]

[illegible]

[illegible]

25 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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27 In such cases in wh. a payee may recover want of consideration he may recover ag.t Drawer Cheque Ch. 52 13 C. 145

As between the parties who are immediately concerned in a Cheque transaction the want of a consideration is a good defence Ch. 180 Byles 64 [illegible] Ch. 680

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[illegible] [illegible] [illegible] [illegible] a bona fide person [illegible] [illegible] [illegible] [illegible] [illegible] of a [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] consideration [illegible] Cheque Ch. 53 [illegible] 2 C.B.

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Usung 22

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[illegible]

[illegible] Vol 21

[illegible]

[illegible]

[illegible] Vol 1826 p 76 81

[illegible]

[illegible]

[illegible]

(Letter [illegible])

[illegible]

32 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

33

34

The division is unknown. [illegible]
a Belt [illegible] in [illegible]
[illegible] County is [illegible]
[illegible] is [illegible]

[illegible] Alderman [illegible]
there [illegible] [illegible]

[illegible]

Ch 65

35 It is [illegible] Presentmt
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[illegible], [illegible] Ch. 60 [illegible]

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[illegible] [illegible] Ch. 57, 70 [illegible]
[illegible] Ch. 56. 565

[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] 5 Burn. 2070. [illegible] 712
2 Show 496 [illegible] Ch. 6

Presentment

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

39 Acceptance is not an express contract within the request contained in a bill, nor is it either a notice or demand. Ex. 14.5.4. 600

Acceptance by agent interior to principal. A general agent may accept in his own name, if he receive it not as consignee. C.L. 9.7.70 Ch. 1.2.87 C.L. 204

A binding letter of credit is a request may cease to accrue in acceptance or account or notice given to the party. Ex. 7.1.2. Ch. 2.15.204 A.S. Michaud on notice

Acceptance of one [illegible] on each, since later [illegible] a bill is drawn on, no [illegible] accepted, one only, other is not [illegible] considered as dishonored. C.L. 29.78.112 Bell C.L. 274 Beawes page 223 Ch. 2.8 Mercy. L.M.

A Drafter is [illegible] in an [illegible], [illegible] or [illegible] interest; a bill may be treated as dishonored, [illegible] or a [illegible] C.L. 69.7.12

40 A primitive [illegible] will [illegible] the [illegible] acceptance, [illegible]

Ex. [illegible] a Bill [illegible] [illegible] [illegible] a Bill [illegible] [illegible] C.L. 15.0.7 Bell [illegible] 270 Mansell [illegible] 573 [illegible] 1009 [illegible] 64 [illegible] 5'4

If a bidder is so big well without actual acceptance, or the promise in any way from a person of a Bid, it may be accepted as if it were communicated to a prior party, for instance that [illegible] 74, 5 Q.B. 1-2, 47 [illegible] 74 Conn. 452 [illegible] 74 Lyd. 82, 0 [illegible] 52, 74 [illegible] 1 Mass. 70 [illegible] 4 Ex. R. 82, 80 [illegible] (which cannot be accepted) [illegible] 75 [illegible] 36.2.

42 An offer or promise to any definite person, is an [illegible] agreement to pay a money according to a Form of a Acceptance [illegible] 75 [illegible] 74

Acceptance is more usually in writing, however it may be verbal or [illegible] 75

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If [illegible] of [illegible] is [illegible], it must be a [illegible] or [illegible] [illegible], or [illegible] [illegible], [illegible] or considered as [illegible], [illegible] 74 + 5.6 [illegible] 75 [illegible] 74 (This rule not generally observed in practice. J.G.)

In [illegible] of a [illegible], [illegible] his consent to [illegible] with a [illegible] [illegible] to [illegible] "[illegible] [illegible]" [illegible] a month [illegible] to [illegible] [illegible] [illegible] 73, 70.5 [illegible] 45 [illegible] 4, 9 [illegible] 401 [illegible] 50 [illegible] 270

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Mra 648.

[illegible]

[illegible]

44 [illegible]

[illegible]

[illegible]

[illegible]

45 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

47 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

48 [illegible]

[illegible] 1820

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

50 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

2 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] without notice, if a reasonable [illegible] time [illegible] — Bell [illegible] Ch. Anct.

53 Drawer's [illegible] before [illegible] acceptance [illegible] would not [illegible] excuse [illegible] notice. 3 Burr. [illegible] Camp. [illegible] Ch. [illegible] 2 H. Bl. [illegible] T. R. [illegible] 5 [illegible] T. R. [illegible] 1 B. & P. [illegible] 300. 3 [illegible]

Drawer's having no effects in drawee's hands, operates as an exception, y^t ye former has sustained no injury by want of notice. But ye presumption [illegible] injury Ch. [illegible] (2 T. R. 713) [illegible] Rep. [illegible] S. G. cannot [illegible] sustain damage

[illegible] in y^e [illegible] Ch. [illegible] 3 Bro. [illegible] B. [illegible] (not Law) [illegible] interested, But notice [illegible] is not [illegible]

So if drawer [illegible] not [illegible] to search [illegible] Ch. [illegible] 9 [illegible] 50

So neglect of reasonable notice is excused [illegible] death or sudden illness of holder, [illegible] in [illegible] is [illegible] Ch. [illegible]

[illegible] conditional [illegible]
[illegible] is necessary. [illegible] (i.e. that it was conditional)

[illegible] (i.e. [illegible] time?)

[illegible] Bill [illegible]

[illegible]

Bill Revived

The manner of [illegible] a distinction is right in a case of a [illegible] a case of an [illegible] Bill [illegible] no notice or form is necessary. Ch. 40 A.T. R. 110 H. D. 136, 42

In a case of a Foreign Bill, strict proof must be made, where no notice is necessary.

This is never sufficient by [illegible] witnesses or any other [illegible] 16 Pet. R. 993 [illegible] 131 [illegible] 271 [illegible]

55

The form of L.R. 149 it must contain a [illegible] of a place where organized Ch. 92 Pth 88 [illegible] 75 Mass. 1 [illegible] 149 Ch. 52. 5

It is to be made in case where a Bill is dishonored. But if a Bill is directed to be paid in A. & he refuses B. a protest may be made in either place at pleasure.

The copy of a Bill is annexed to a Protest 56 Ch 42 Pth 88 155

But a copy of a protest need not accompany a notice of non-acceptance. The notice of a Protest must be given Ch. 55 Ch. 55 2 Pk. Bl. 560 [illegible] 5. 2 [illegible] 99 Bulr. 1. 271 Mass. 68. 86. Contra [illegible]

It is not necessary to read a protested Bill

Upon non-acceptance of an inland Bill no protest is necessary to subject a prior party. [illegible] (drawee's refusal to comply with a request, is a non-acceptance) Ch. 93 [illegible] 80 [illegible] 81 & 2 00 L. Ram. 902

It is said in 3 R. 169 that a notice must express a holder's intention not to give credit [illegible] Thing is unnecessary Ch 93. 7 & Contra.

If the Maine Bill necessitate protest in order to [illegible] It is required for a purpose of entitling a holder to costs, interest & damages, Ch. 93, 4 Stat. 90 Lyd. 4. 4

56 [illegible]

57 [illegible] Notice

given [illegible] Foreign Bills [illegible] 150

[illegible] Foreign or Inland Bills [illegible] is sufficient, [illegible] 2 [illegible] 509 [illegible] 99 [illegible] 4 [illegible] 69 [illegible] 104 [illegible] 48

[illegible] There is no model requiring [illegible] direct [illegible] notice of [illegible] sufficient [illegible] to [illegible] 2 [illegible] 565

If [illegible] in [illegible] Foreign Bills [illegible] must be made within a [illegible] of [illegible] [illegible] 144 [illegible] 144

58 Notice of non-acceptance in case of foreign bills [illegible] must be sent within a reasonable time [illegible] parties to whom it is given intends to resort, within two months was formerly holden sufficient [illegible] discharge [illegible] 96.7 2 [illegible] 569 Bul. 271 [illegible] 9 [illegible] 318 [illegible] 27 [illegible] 152 [illegible] 148 [illegible] 8

[illegible]

[illegible]

[illegible]

59

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] in [illegible] hands, this does not [illegible] [illegible] [illegible]

[illegible]

[illegible] Kenyon, [illegible] 51
a promise of a [illegible] knowledge of
[illegible] consequences of the [illegible] matter [illegible]
[illegible] 102, 12 [illegible] 454, 657 [illegible] whom reasonable
notice has not been given [illegible]

[illegible]

[illegible]

[illegible] 102 Sm 158

[illegible]
3 Beav 1357 [illegible] 57

In case of a conditional acceptance
want of notice is cured by completion [illegible]
of a condition where a [illegible] [illegible]
performance is absolute [illegible] 10 A.A.R. Bart. [illegible] [illegible]
Thomas 7 [illegible] R. 82 [illegible] 57

Lee/[illegible] [illegible] Tests

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Where an inland [illegible] [illegible] according to ye [illegible], gives no right except agt ye drawer or him [illegible] [illegible] a Bill [illegible]. [illegible] [illegible] Bills [illegible] [illegible] 78 [illegible] Carth. [illegible] [illegible] Beaw. 4 [illegible] 6. [illegible]

If ye Drawee refuses to accept at all any 63
one may accept for ye honour of ye Drawer or Indorser Ch. 104 Beaws pl 38 Mar 125 Lutw 896. 899 Carth 129 Kyd 153

Acceptance for ye honour of ye Bill is ye same as for ye honour of ye Drawer Ch. 103 Kyd 153 Beaw. Pl 38

That a Bill previously accepted after protest by one person may be accepted by another for a different Party Ch. 104 Beaw. Pl. 52

It is said yt ye holder is bound to receive an acceptance after protest when offered by a responsible person. Because [illegible] protest not affecting [illegible] [illegible] Party remitting it [illegible] him not to receive such acceptance. Unreasonable: for it is a breach of ye implied warranty yt Drawee should accept. S.G. Ch. 104 Beaw. 37, 56

But it seems not the L. has been decided. yt ye holder is not bound to receive such acceptance in any case. Ch. 104 [illegible] 410 Kyd 155, 6

If after acceptance upon protest by a third 64
person ye Drawee is willing to accept ye former may with ye consent of ye holder permit it, not without Kyd 156 Beaw. 45

[illegible] made [illegible] a Bill [illegible] before a receiver on exchange, for a [illegible] of a Party. [illegible] [illegible] may object to a person [illegible] — not a mere [illegible] when [illegible] Ch. 05 [illegible] 25-7

Mode of Exchange Sworn Protest

Persons [illegible] a [illegible] or [illegible] in [illegible] of witnesses, [illegible] Bill in [illegible] or "Drawer" or "Endorser" [illegible] "[illegible] time [illegible]" [illegible] of these "Accepted sworn Protest in [illegible] B" or "[illegible] E. O" Ch. 105 Page 153

Consequence sworn protest is an [illegible] [illegible] [illegible] Bill. It is [illegible] to [illegible] [illegible] It was [illegible] Ch. 05 Com. St 71 Sec 8 [illegible] [illegible] 118 [illegible] 210 [illegible] 1014.4

If [illegible] for a [illegible] [illegible] Bill he is liable to [illegible] a [illegible], [illegible] [illegible] due to [illegible] [illegible] [illegible] the holder [illegible] [illegible] [illegible] a [illegible] [illegible] Ch. 105.5 Page 153 Sec 45, [illegible] E. 110

[illegible]

[illegible]

[illegible]

66

Transfer

Bills payable "to order" "to order of" "to the bearer" or "to bearer" are transferable i.e. negotiable

Business checks are negotiable.

Bills payable to the order of Bearer cannot be transferred Co. 47. 8.10, 8 3 Burr. 1517, 1527 Doe 63, 5 3 East 211 Salk 126, 2 Ld Raym 1180 3 Lev. 99 Cowl 145 2 Bl. 427

Bills payable to fictitious persons or order or to such persons known by name to be fictitious 2 B & P 442 Holt 147 Burr. 1220 Co. 109, 122 Co. 125, 7, 138 Cowp. 411 2 Term. 309, 9

Notes Bills are negotiable or not is a question of L. by L. M. except in new cases, when custom of merchants must be received. Quere as to a custom of negotiability Co. 10. 56 2 Burr. 1210, Bl. R. 295 2 Cowp. 65 3 Ch. or 603 Watson on Part 2nd 258

53 A genu. or valid transfer can be made only by Payee, or other person having a legal interest in Bill. Stamp are necessary to constitute genu. transfer or Endorsement not Business or credit, Bearer will give a discharge to not the other parties, nor if connected a crime Co. 15. 16. 2 4 T. R. 25 Co. 31. 307

[illegible]

If a feme sole, being lessee or holder, marries, a right of transferring is in her husband. [illegible] 5, 6 3 Ball 53 10 Mod 240 See 27

If a owner or holder becomes bankrupt a right to transferring rests in his assignees from time of act of Bankruptcy committed. [illegible] 1 Ch. 1837 See 27

But if a bankrupt receive transfer notice, his assignees, sick a notice to enforce it, or not, it upon a transfer &c. See 1.50

[illegible] 68

[illegible] 11, 14, 3 3 Ball 11, [illegible] 07 [illegible] 200 2 Burr 57, 1 Ch. 157, H. R. 022 2 Burr. 225

If a will is made a transfer is [illegible] not in partnership, interest & right of transfer is in all of them collectively - not in one Ch. 28, 9 112 [illegible] 658 Ego 100

[illegible] [illegible] partnership — It may be transferred by ye act of one for a debt of one Partner [illegible] [illegible] being agent for all others

If negotiable to be for ye use of 3^d person [illegible] [illegible] 117. 119 2 Camp. 307. 9 [illegible] 5 [illegible] 204 [illegible] 7. 8 2 [illegible] 500

It is said y^t if a Bill is indorsed to an infant & he endorses to another ye latter may recover of all ye prior parties except ye infant [illegible] ye Bill in ye hands of ye infant is transferable [illegible] [illegible] [illegible] [illegible] [illegible] 192 [illegible] 2. 611 [illegible] 112

Bills are usually assigned after acceptance & before ye time of payment. But ye Transfer may be made before acceptance [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 3 Camp. 400. 574 [illegible] 515. 16. 17 [illegible] 89

If Transfer was made upon ye Bill [illegible]
59. [illegible] valid transfer must be made [illegible] ye time fixed for payment [illegible] 113. 1 2 [illegible] 575. 5 [illegible] [illegible] 2. 430 3. 30 [illegible] 1510 [illegible] 423. 430

[illegible] transfer [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] had knowledge of such equities [illegible] [illegible] had not [illegible] 11. 4 [illegible] 283 [illegible] 2. 83 [illegible] 423 [illegible] 30

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] assignee thereof [illegible] the [illegible] bona fide holder [illegible] transfer [illegible] of [illegible] [illegible] endorsement [illegible] [illegible] immediate transferee [illegible] 7 T.R. 423, 430

An endorsement of the [illegible] having [illegible] [illegible] [illegible] [illegible] [illegible] payment [illegible] Bills [illegible] indorsed, [illegible] [illegible] not [illegible] [illegible] because [illegible] transferred out of [illegible] ordinary course of business [illegible] therefore
[illegible] 5 [illegible] 70 [illegible] B. & C. 84 [illegible] 46 [illegible] 170 [illegible] 136

A Bill [illegible] may be [illegible] [illegible] [illegible] [illegible] 65 [illegible] Chitty [illegible] 2 [illegible] 120 [illegible] 00

[illegible] Bill [illegible] endorsed in full [illegible] [illegible] [illegible] transferred [illegible]. The transferee can not [illegible] [illegible] [illegible] to the transferee 4 T.R. 28 [illegible] B. & C. 627

A Forged endorsement on a forged Bill is not [illegible] in [illegible] hands of a bona fide holder

70 Mode of transfer is governed by same rules as instrument, & not as a chose in action, of course, tho' usually

Ex. Bill payable to existing person or order, is transferable & payable to bearer, but also if Bill payable "to order" or "to order" or bearer is clearly not be transferred by indorsement, or mere delivery 3 Burr. 1516 2 Ld. Raym. 1562 Esp. 56. 600 2 Ld. Raym. 442 Fleet. 118 Chim. 332, 340 Comyn. 211 & 233 Peake. 225 1 Esp. 180 1 Ch. 557 and 811 Lord. 193 4 Esp. 210 1 Burr. 452, 1516 1 Bl. R. 1095 Kyd 28 1 Esp. 180

But a Bill payable "to order" "to order or" "to order or his assigns" or to bearer or order is not in new transferable, & first is taken except by indorsement 1 L. 110, 7, 8 7 Mod. 87, 1 Ld. Bl. 310 Esp. 188, 9

But when indorsed in blank or payee is Bearer it passes by mere delivery Ch. 116 Esp. 89 1 Esp. 180 Comyn. 211 & 233, 619 & 639

71 Unfortunate formal words are necessary to an indorsement, it seems that if a order is name be written by book or any other pen by himself or by his agent 1 L. 10 Ch. 116, 39, 130 Esp. 180 2 Bl. 413 Str. 1003 2 Ld. Raym. 443 Com. R. 311

Even written & numbered Bill is not an indorsement. Indorsement may be written in blank, in full, or in instalment, 1 L. 10, 7, 8, 11

Endorsement in blank [illegible] merely in writing a endorser's name on the back, [illegible] [illegible] common. Ch. 117 & 139

Such endorsement [illegible] [illegible] [illegible] trans- [illegible] [illegible] [illegible] [illegible] power of constituting himself assignee, by filling it up to himself. Ch. 117. 75. 80 [illegible] 130. 12 Mod. 192. 244 [illegible] 475 Bull. 275 [illegible] 103. [illegible] 311 2. Rol. 87

[illegible] [illegible] 3" [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

The [illegible] may fill [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] himself. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Kyd 97, [illegible] [illegible] 103 2. Ray [illegible] [illegible] 2. 207

Some [illegible] endorsement is in name [illegible] 72 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] with [illegible] Ch. 117, 8 [illegible] 125. 0. 130 2. [illegible] 87. 12 Mod. 193. 244 [illegible] 83. Bull. 207 2 Str. 1103

The Holder may in such case [illegible] [illegible] [illegible] [illegible] [illegible] Bill. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Kyd 96 [illegible] 157. 130 2 [illegible] 87 2 Str. 1103 2 Mod 193. 244

A strong instrument [illegible]
[illegible] made [illegible]
delivery. [illegible]
[illegible] Chancellor [illegible]
[illegible] Chancellor [illegible] 633
[illegible] 630 [illegible] 1870

[illegible] modify [illegible]
[illegible] remaining [illegible] be restrained [illegible]
[illegible] indorsement in full. [illegible]
[illegible]

A holder may strike out [illegible]
[illegible] holder [illegible] himself. Qu. [illegible]
[illegible] strike out [illegible] former? [illegible] 101
[illegible] 1070 [illegible] 1871 [illegible] 4 [illegible] 295 [illegible]
633 [illegible] 296
[illegible] [illegible]

[illegible] Page makes an indorsement [illegible]
a blank indorsement by [illegible] with [illegible]
[illegible] from him by delivery [illegible]
[illegible] 1876, 19

73 That a Bill payable to order is not
negotiable by mere delivery, unless indorsed in
blank, by Payee or Indorsee. And is not negotiable
at all without an indorsement of some kind
by Payee for a holder in such a case cannot sue
in his own name, he can sue except as transferee
[illegible] 116 7 Mod. 87 Kyd 38.) 1 Ch. Bl 600 Chaney
611 or 633. 634 or 617 or 639

An indorsement in full, is one ex-pressing to whom it is made. As "Pay [illegible]" [illegible] 8, [illegible] 34

[illegible] indorsement in blank [illegible] the [illegible] indorser [illegible] Ch. 34

[illegible] bill [illegible] in [illegible] instance [illegible] indorser's [illegible] that he makes a blank indorsement it is afterwards negotiable by delivery Ch. 118. 9 [illegible] Burr. 1216

The negotiability of a Bill, once [illegible] cannot be restrained even by [illegible] or special indorsement unless by express words of restriction. The omission of words "or order" [illegible] not [illegible] its negotiability, and if [illegible] indorser in blank [illegible] remain [illegible] be restrained [illegible] indorsement transferring interest Ch. 149 Camp. 2. 311 B.C.R. 185 [illegible] 617. or 637 3 Burr. 1216 [illegible] 55 [illegible] 126

Restrictive indorsement is [illegible] expressly [illegible] Bill [illegible] "Pay to [illegible] only" [illegible] or "[illegible]". The effect is to [illegible] Bill Ch. 149. [illegible] 617, or 637 [illegible] 1219 74

[illegible] indorsee having absolute property, [illegible] limit [illegible] [illegible] accordingly [illegible] otherwise [illegible] transferred interest [illegible] 30 [illegible] 28, 119 [illegible] 617. or 637 Ch. 119 2 Burr 1226, 7 1 B.C.R. 299 [illegible] 163

[illegible]

[illegible]

[illegible]

75 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Excess of Income 76

77

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

78 [illegible]

[illegible]

80

Protest for better security

Presentment or Indictment

[illegible]

Vide Ch. B 300 3 John 202–4 4 " 144–7 2 Ld Raym 1. 7

[illegible]

exploded

[illegible]

[illegible] Marsh 125

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

55 If a bill drawn [illegible] payable [illegible] days after date, or after sight, or at a [illegible] time, the time of payment is [illegible] by the [illegible] 138 Bank of [illegible] 2 155 Ken. R. 255 [illegible] Chitty [illegible] 8, 9, 10

[illegible] time. After date, or after sight, or at a [illegible] time, the [illegible] is [illegible] 303 R.L. [illegible] 6 T.R. 212 Chitty [illegible] 970 [illegible] 25 L

The [illegible] of a bill or note [illegible] indorsement, or in [illegible], commence [illegible] 10 [illegible] T.R. 103 Cowp. 714 *

If a bill payable [illegible] days after date [illegible] the time is computed from [illegible] it issued, exclusive of the day of its date. [illegible] 109, 143 Bayley 88 [illegible] 1 T.R. 337 [illegible] Pratt B.3 [illegible] L.1

* [illegible] "days after date", or "days after date", if from a date a day is included in a computation of time, except when a bill or note is payable [illegible]

[illegible]

[illegible]

[illegible]

86

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Usance [illegible]

[illegible] Ch. 141 Hyd. 4

[illegible]

Foreign Bills are usually drawn at a usance or at sight.

The length of a usance is fixed at [illegible] by custom. Hyd. 4

If a bill is payable a month after sight, the computation is by calendar months, [illegible] other instruments in gen. 2 B.C. 1417 Hyd. 6 0 T.R. 224 2 East 333

27 If a bill is payable at a fixed time after sight, the time is computed from the day of acceptance or protest for non-acceptance. The computation commences the next day Ch. 144 [illegible] Com. Mer. 2.7

Where the certain time of payment is expressed, payment must be made within reasonable time before the expiration of the time, in the usual business hours, [illegible] Ch. 1017, 149 [illegible] 2 Ch. 415, 503 [illegible] 1 Ch. 1100 [illegible] Ch. R. 167 [illegible] 2 [illegible] 503 [illegible] 1 [illegible]

The usage of presentment being [illegible] presentment must be made within a reasonable time, the time of expiration of the day, in the usual business hours [illegible] Ch. 149 [illegible] 69, 07 Ch. 165

The [illegible] for payment [illegible] Bills [illegible] Ch. 19 [illegible] 410, 415

Payment [illegible]

[illegible]

[illegible]

[

If ye drawee [illegible] with ye consent, [illegible] payment [illegible] discharged; [illegible] remedy [illegible] Chitty 155, 183 Cook B. L. 100

Otherwise if ye holder receives a conditional acceptance being [illegible] it is not [illegible] but he must give notice of non payment Ch. 155

It is said, y^t if ye holder receives [illegible] acceptor [illegible] in [illegible] without ye consent of ye other Parties, they are discharged, because it shews an election to [illegible] money of [illegible] 2 Ray 744 Ves 745 [illegible] Sid. C. 173.9.5 Marsh 89 Ch. 156, 100 Cook B. L. 61, 70 Ch. 84, 133 (Chitty 68, 55, [illegible] Ch. 84, 133, 15) Cook [illegible] if due notice is given) [illegible] I can see no rational principle whatever

90 If [illegible] in accordance with the [illegible] [illegible] [illegible] Ch. 134, 57 [illegible] 2 T. R. 38 [illegible] Bull. N. P. [illegible] no [illegible] can be commenced [illegible] by any [illegible] drawer or in execution of [illegible]

A [illegible] endorsement [illegible] payment [illegible] must be [illegible] Ch. 54, 5, 164 [illegible]

Notice must be given of non payt

[illegible] for a [illegible] must [illegible] may be [illegible] Com. U. S. L. Journt 11

[illegible]

[illegible]

[illegible] Moore 68 55

The effect of repealing an income tax law 91
[illegible]

[illegible] of the [illegible]
[illegible] 95 U.S. 82 [illegible] 17 [illegible] 703 [illegible]
2 11 Ok 596

[illegible]

[illegible] 52 58 Ill. 103 [illegible] 4 Ow. 170

[illegible]
[illegible] 1 Pet. 105 Dougl. 55 [illegible] 55

Payment supra Protest

Where a third person intervenes to [illegible] and Payment supra protest made in [illegible], [illegible] whom he [illegible] Ch. 403. 413. 03 [illegible] 1012 Bt. P. 30 Marsh. 128 Kyd 152 Beaw 452

92 But a creditor having made a simple acceptance cannot pay supra protest for the honour of the *Drawer*, [illegible] him bound already by his previous acceptance Beaw. 451 Ch 163

But if he has no effects of y *Drawer* he may after a simple acceptance pay for *his* honour & thus acquire a remedy vs him on y *Bill*. He is not a remedy without a protest. The effect of y Protest is only to rebut y presumption of his having effects & thus shift y "onus probandi" [illegible] he has effects of y Drawer or not. [illegible] Ch. 115, 115. 122. 403.4 Kyd 193.5 [illegible] 207 B. Pl. 458 Beaw. 391 Marsh. 110 [illegible] 139

Generally payment should not be [illegible], but rather protest [illegible] payment without Protest, Payer has no right to recover of any of y parties on y Bill Ch. 403 Beaw. P. 53 Marsh 128

The [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Promissory Notes

93 A promissory note is a direct engagement in writing, to pay a sum of money [illegible] [illegible]* [illegible] [illegible] [illegible] Ch. on Bills 5.15 [illegible] * or to him or bearer

[illegible] [illegible] C. [illegible] [illegible] [illegible] [illegible] 4 T. R. 151

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] (Ch. on B. 10)

I presume they are negotiable throughout the U. S. [illegible] Notes under $35 are not negotiable in [illegible].

[illegible] [illegible] [illegible] [illegible] 15 [illegible] 319 1 T. R. 167

94 A Promissory Note [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

96

feet

47

* A cancel reserve B

99

101

102

103

104 [illegible] Cents 103

[illegible]

[illegible]

[illegible]

105 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 106

[illegible]

[illegible]

[illegible]

107

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Pecuniary

[illegible] proof of payment and notice is not necessary where it is proven that there has no effect

Conclusions [illegible]

[illegible] proof of notice not necessary

10 [illegible]

[illegible] contra)

[illegible]

[illegible]

[illegible]

[illegible]

113 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

114 [illegible]

115

116 [illegible]

[illegible]

[illegible]

[illegible]

117 [illegible]

[illegible]

[illegible]

[illegible]

[illegible] I think there is a [illegible]

[illegible]

[illegible]

[

[illegible]

[illegible]

[illegible]

[illegible] 680 [illegible] 221

Insectivores

[illegible]

[illegible]

[illegible]

[illegible]

IIe Marine Insectivore

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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11 [illegible]

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[illegible]

12

13

[illegible]

[illegible]

[illegible]

14 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

The validity of marine policies has been contested but it now seems settled that they are valid. [illegible] 1 Burr 467. 5 Mass. 548. Cir. 583. 2 Term. 200. 10 East

[illegible] recover upon a marine policy [illegible] 2 Burr 667. Park 291 [illegible]

[illegible] 1 [illegible] 1 [illegible] 1 [illegible] "free from average" [illegible]

[illegible] 64 [illegible] 1 [illegible] 10 East

[illegible] depend on [illegible] 1 [illegible] 1 Burr 180 – 8

[illegible]

[illegible]

[illegible] 19

[illegible]

[illegible]

[illegible]

[illegible] 20

[illegible]

21 a Reinsurance is a [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] indemnify the original insurer [illegible] [illegible] in the first [illegible] 2 T. R. [illegible] [illegible] 6 [illegible] 10, 130 [illegible] 92, 112, 15 Por 131

[illegible] of [illegible] reinsurance is [illegible] to the original insurer, and not to the original assured, for there is no privity of contract. Marsh 111 [illegible] reinsurer is bound in the event of a loss to pay [illegible] [illegible] original insurer [illegible] [illegible] his insurance [illegible] it cannot [illegible] [illegible] event

It is [illegible] [illegible] original insurer [illegible] 1 Phillips [illegible]

Reinsurance is valid at [illegible] of most commercial countries. They are [illegible] by 19 Geo. 2 except in [illegible] cases viz. in case of insolvency [illegible] of the original insurer 1 T. R. 101 Marsh 113, 14 Park 277, 8. Because in Eng. they speculated [illegible] premiums [illegible] at a subsequent time reinsured at 5 per cent, [illegible] [illegible]

22 [illegible] are as follows

[illegible]

[illegible]

[illegible]

Where a [illegible] 23

[illegible]

[illegible]

[illegible]

24 Over Insurance [illegible] a [illegible] greater [illegible] [illegible] value [illegible] [illegible] insurance

[illegible] premium was [illegible] first underwriter [illegible] whose subscriptions amounted to value of [illegible] [illegible] [illegible] [illegible] or [illegible] subscriptions Mars 118, 9

Where there are two policies on same subject & same person is not to have benefit of both [illegible] insurance is not a double insurance [illegible] 1 Burr 489, 490 Mars 5. 110-11 Note 13

25 Voyage [illegible] insurance [illegible] are generally effected for a voyage [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Marsh

An entire and indivisible, if in any respect illegal in its commencement makes an insurance upon any part of the voyage illegal. Ex. [illegible] Marseilles & Leghorn & war [illegible] France & even [illegible] [illegible] [illegible]

26 If there is an insurance [illegible] [illegible] voyage or either [illegible] the whole [illegible] because the contract is not [illegible] an entire voyage 8 T. R. 23 [illegible] [illegible] Marsh. 119

Risk

[illegible] 20

[illegible]

The term hazard only relates to extraordinary or unforeseen risks [illegible] insured against

Insurance is not liable for a loss [illegible]

[illegible] incident to the regular [illegible] certain [illegible] [illegible] The insurer cannot make himself liable for misconduct [illegible]

[illegible] 27

[illegible] The common [illegible] [illegible] being [illegible] obviously [illegible]

The clause describing risks [illegible] [illegible] [illegible] [illegible]

The common [illegible] 28

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

"[illegible] unless [illegible] or [illegible] ship or stranded" Mear 141, 140

Very other articles might be thus [illegible] at a pleasure of a partner.

The word "accident" is used in a strict and [illegible] sense. It implies first a [illegible] loss [illegible] recovered by [illegible] and [illegible] in distribution made by [illegible] owners of [illegible] goods or ship [illegible] and particular loss recoverable for [illegible] gen. [illegible] Mear 140, 141

Usual memorandum. [illegible] are not liable for a particular loss [illegible] unless [illegible] particular occasions a gen. average

"Free from [illegible] unless [illegible]" [illegible] means [illegible] are not liable unless [illegible] loss occasions in contribution. Mear 141, 8. 460 401. 1, 150 3 Beav 1535 5 4 J. R. 97

29 "[illegible] unless [illegible] ship be stranded" [illegible] must [illegible] from [illegible] unless [illegible] stranded. Qu. [illegible] does it amount [illegible] mere condition i.e. whether [illegible] liable for a partial loss [illegible] ship be stranded, [illegible] stranding [illegible]

[illegible] 190–155 2 Bac 155 [illegible]
1 Ch 30 Mass 16, 6 2 Com 10 [illegible]

1. [illegible] of [illegible] were [illegible]
[illegible] not [illegible] of [illegible] were not
liable 2 B.R. 20 Mass. R 410

The rule is now if there is a contract
for one of your servants mentioned above but no
[illegible] during a voyage [illegible] are liable

Other [illegible] are [illegible] for a [illegible]
[illegible] course of a [illegible] [illegible]
[illegible] are liable for [illegible]
[illegible] is that they are
liable as for any other [illegible]

There are cases in which owners & masters
is liable and not insurers. There are others in
which masters & owners are not, there are 30
[illegible] not from a [illegible] act of a master or mariners owners & masters
are liable and not insurers. [illegible]
[illegible] There is [illegible] there is some
[illegible] not & [illegible]
[illegible] 9 Pick 220, 1 Ch, Mass 150, 304, 372

The [illegible] are [illegible] in [illegible]
[illegible] are carriers. Except in following cases

1. For such a purpose [illegible] 2. By [illegible] of public enemies 3. By [illegible] of owner of goods i.e. under a common robber [illegible] 2 Hale P.C. 132. 135 1 Hawk. 90. 2 38 1 East P.C. 5 [illegible] 1 [illegible] 68

31 Simple theft committed in respect of goods in not recognised as a special offence. The same things in a public market [illegible] 1 Hawk 240 [illegible] 26

But [illegible] by Bailees, committed in income from without, a increase or [illegible] [illegible] 25 Geo. 14 & 15 [illegible] But if increase is received [illegible] of [illegible] 1 & 2 [illegible] by using in a name of owner of goods, they will compel a increase to come his income for of purpose Mar 161

[illegible]

[illegible]

32

[illegible]

[illegible]

[illegible]

14 [illegible]

[illegible]

35 [illegible]

[illegible]

[illegible]

[illegible]

Performance of work on a Ship

[illegible]

[illegible] Corp 601 Mar 73

[illegible] Mar 73

[illegible]

37

[illegible] 23.85 Mar. 1834 [illegible] 1 Ch 152 Mar 81 Mar 1845. 499 [illegible] Post 100

The Rule [illegible] insurance [illegible] certain period of time and during ye time [illegible] death [illegible] [illegible]

The [illegible] subject [illegible] insurance [illegible]
38 But where grace is limited to 24 hours of commencing [illegible] time [illegible] 24 hours [illegible]

[illegible] 24 [illegible] with [illegible]

[illegible] within 24 hours [illegible]

39 [illegible]

[illegible]
[illegible] They [illegible]

[illegible]

41 [illegible]

[illegible]

[illegible] 193.4.380 [illegible]

[illegible] seaman's insurer is not discharged [illegible] 195–197 O.T. R. 578

Policy

[illegible]

[illegible]

[illegible]

43

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Port 127

44 [illegible]

[illegible]

45 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

46

[illegible]

[illegible]

[illegible]

[illegible] would be a bar to a demand for [illegible] been received by the other party [illegible] [illegible] [illegible] [illegible]. Marsh. [illegible] Emerigon

The insured [illegible] [illegible] upon a marine contract [illegible] no additional damages.

47 The ~~[illegible]~~ policy when ~~[illegible]~~ effected [illegible] is a proof [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Marsh 210 Park 4

Where the agent has stated to his principal [illegible] consideration has been effected when there has been none, the principal may [illegible] maintain [illegible] against [illegible] [illegible] [illegible] ~~[illegible]~~ [illegible]

If there is no consideration [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] have been [illegible].
48 Marsh 210 Park 6 [illegible] [illegible] [illegible] Burr 34 4 T.R. 210 Marsh [illegible] [illegible] clause [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Law [illegible] Marsh 210

Requisites of a Common Policy

These are Ten

II The name of the insured, of his agent, or Trustee, must be inserted in the Bill; formerly [illegible] was left in Blank, but it was forbidden by [illegible] 25 Geo. 3 & afterwards by 28 Geo. 3 1 [illegible] 152 [illegible] [illegible] Part 17

III On a policy on goods the [illegible] must be mentioned [illegible] by policy in [illegible] [illegible] transportation. Where a ship is named the insured [illegible] change it except from [illegible] or [illegible] [illegible] [illegible] Marsh 351 [illegible] 248 [illegible] 230 Park 19 Marsh 210, 379, 9, 656 [illegible] 52 49

This rule is not however invariable [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] error [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] to be in any [illegible] 2 [illegible] 3 [illegible] [illegible] 3 [illegible] [illegible] [illegible]

The name of the [illegible] [illegible] [illegible] [illegible] 50 [illegible] [illegible] [illegible] [illegible] vessel [illegible] [illegible] [illegible] in a vessel of marque it is said to be [illegible] to name her as such. If a fact was concealed & she is captured [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] discharged. Marsh 221 [illegible] [illegible] [illegible] [illegible]

The name of a minister should be inserted if there is no clause authorising it to be inserted at a subsequent date, or else in case of necessity a proper consent to the filling. Hence it is safer to insert after a minister's name "or successor" if a proper [illegible] of [illegible] an unknown name of minister.

[illegible] The initial letters of its must be specified in notice of [illegible], it is not necessary to mention [illegible] kind. Mar 221. But in Treasury Regulations [illegible] [illegible] 51 notice. Debentures or debenture stock securities must be specifically named. Sec. 2. 39, 35, 422 & Mar 1894. Turn. & Mar. p. 5. 225

The minister clerks & officers [illegible] not included under a nominal [illegible] [illegible] Hence it is [illegible] of [illegible] 225 of Chancery

The Public notary, [illegible] [illegible] are [illegible] signature or receipt of the [illegible] [illegible] be recovered. Mar 220, 6 Clerk 26

Instruments, jewels [illegible] [illegible] under a nominal [illegible] [illegible] are not advantages to [illegible] Mar 1850. Mar 222 Mar 220 [illegible] securities [illegible] by persons [illegible] are not [illegible] Act 32 and 33 Mar 223, 266, 127

IV

There is an essential difference in law between a deviation, an intended deviation & a change of voyage.

A deviation is a voluntary departure from the usual course of a voyage insured, not in consequence of necessity [illegible]. It is a question of fact, [illegible] [illegible] Park & Marsh [illegible] [illegible] 3 East 80. 83

An intended deviation is a design to deviate not carried into effect & not amounting to a change of voyage [illegible] Park & Marsh 296, 302 [illegible]

A different voyage is where a [illegible] [illegible] before the [illegible] is determined [illegible] insured [illegible] [illegible] [illegible] voyage, [illegible] [illegible] the voyage [illegible] different from that insured.

A mere deliberation [illegible] [illegible] [illegible] deviation [illegible] [illegible] [illegible] [illegible] an intended deviation [illegible] [illegible] [illegible] [illegible] [illegible] execution [illegible]
54 [illegible] from [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Park 298 Marsh 282

[illegible]

V [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

55

VI [illegible]

VII [illegible]

VIII [illegible]

0

IX [illegible]

[illegible]

[illegible]

[illegible]

Warrant

[illegible]

[illegible]

Warranties are either express or implied. An express warranty is one expressed in terms. An implied warranty is one arising [illegible] of contract that is not expressed in terms [illegible]

That [illegible] [illegible] For a warranty [illegible] is a case of [illegible]

Express warranties are [illegible] according to commercial import Pars 250 [illegible] with [illegible] 705 [illegible] Chit 184 5 755 Pars. 250 Russ 163 [illegible] The [illegible] same [illegible] from a [illegible] Pars 250, [illegible] Ert 144 158, 161

[illegible] is warranted [illegible] [illegible]

50 [illegible] Chit 6007, 7 [illegible] Russ 360, 0 Pars 250

[illegible] a [illegible] is rendered impossible [illegible] serious loss [illegible] within a [illegible] is [illegible] shall [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] "at [illegible]" [illegible]

[illegible]

Correct

62 [illegible]

[illegible]

[illegible]

[illegible]

03

[illegible]

[illegible]

[illegible]

The mere sailing with the convoy [illegible] satisfying warranty, it is then indispensable [illegible] master obtain sailing orders from a naval commander of a convoy. These instructions are [illegible] [illegible] Directions.

54 [illegible]

[illegible] sailing instructions as they are [illegible] [illegible] compliance with [illegible] 175, 6 [illegible] [illegible] [illegible]

A ship must continue with the convoy [illegible] voyage [illegible] 278. 4 [illegible] Park 278. 9.4 [illegible] [illegible]

[illegible] 3 Lev. 320 Carth. 216 Salk. 443 Mar 276. 80 4 Mau 58

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Resolutions

[illegible]

[illegible]

[illegible]

[illegible]

71

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

72

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

73.

[illegible]

74.

75.

76

[illegible]

77.

Prêts — [illegible]

[illegible]

78

79.

80

81.

82.

83

[illegible]

[illegible]

85

[illegible]

[illegible]

1. [illegible]

[illegible]

2. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

90.

91.

92.

93.

94.

95 [illegible]

[illegible]

[illegible]

[illegible]

96 [illegible]

[illegible]

[illegible]

[illegible]

Burnside

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Rev 1603

[illegible] Rev 10 Inv 463

[illegible]

[illegible] Rev 1 Inv [illegible]

[illegible]

[illegible] Rev 150 Inv 404

[illegible]

[illegible] accidental but by ordinary [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

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Government

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[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

For the [illegible] of [illegible] abandonment see [illegible]

The abandonment must be made in reasonable time. Marsh. 518. 519

The effect of an abandonment is to transfer [illegible] in [illegible] or [illegible] Marsh. 519 20

If after an abandonment [illegible] compensation is made by a third person for injury occasioned to the [illegible], the insurer may have this compensation. [illegible] Marsh. 522

In case of any disaster, [illegible] continue till abandonment is made, [illegible] charges or expenses [illegible] must be reimbursed by the insurers. 1 B. & P. 608. Marsh. 509. 10. 526

After an abandonment [illegible] continues the management [illegible] 1 B. & P. 608. Marsh. 524

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Ex $1000 [illegible] $500 [illegible]
$100 a present 500 - 100 = 400 500 - 400 = 100
[illegible]

[illegible]

[illegible]

[illegible]

Where there is no [illegible]
it seems that a premium is recovered on a policy
or on a [illegible], where a action is brought on
policy insured may give evidence in [illegible]
government or under a special count on policy.
Mean 588, 544 Park 7.

Return of premium

There are various cases where premium
will not be recovered back. [illegible] recovered back.
The insurer not liable to pay a loss no pre-
mium. Not can be retain a premium the policy
is inadequately [illegible] no risk B. Received [illegible]
548

Where the premium has been received
be a loss without running any risk premium
may be recovered back as money had received
2 Burr 1008 Doug 454 Cowp 008 Mean 548 B. 2600

1 Return of premium not allowed
II. Where a contract is void initio cause
Mean 549. 500 [illegible] no risk run
The [illegible] may be [illegible]
as [illegible] [illegible] [illegible]
[illegible] Mean. 549 103-105 Park 203

[illegible] insured [illegible] of [illegible]
interest [illegible] [illegible] [illegible] than the real
[illegible] there must be [illegible] of premium

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

On an insurance at & from a given port the risk 'at & from' where the premium is entire cannot be divided & of course here there can be no return of premium — But I cannot see any very clear distinction between this case & the case of the insurance from London to Portsmouth & from P. to Halifax in wh case the premium was entire Marsh. 567: 8. 8 John 1.

The gen'l rule is where the risk is entire & wea commences there can be no return of premium & I G does not very much approve of the cases in wh the risks have been divided.

However that the time of the continuing of the risk there can be no apportionment where the voyage is entire if the Ship deviates an hour after leaving the port of lading. Doug 751. Marsh. 571.-4.

The rule is the same tho' the voyage be to several diff. places if the risk & the premium is entire & the premium being entire the risk must almost universally be entire. But if the premium is distinct as 1 p. Ct to & from A to B 2 p. Ct to C If the voyage from A to B is never run the 2 p. Ct must (Doug 751. Marsh 571: 4) be returned.

So on an insurance for a certain period of time for an entire premium, if the risk once commences there can be no return of premium, tho the ship be lost by a peril not insd. agt. the premium cannot be returned. Campbell Marsh. 574: 8.

In questions of apportionment the entirety of the premium is a strong proof that the risk was entire & I think in most cases conclusive proof Doug 564. Marsh. 578: 9.

Part of the premium is frequently agreed to be returned, in a certain event. In such case there is of course no difficulty. The policy itself determines the sum & the circumstances under which it is Doug 255 Marsh 579

But the rule is the same if the insurance is on goods at 10 pr ct for instance & 5 pr ct if the ship sails with convoy & arrives here if the ship sails with convoy & arrives the insurer must return the 5 pr ct even tho' the goods be lost. (Ib).

So if the insurance is on freight

Y. R 401 Mar 336. 1

When the law requires a return of prem.^m it is the custom of most maratime countries to allow the insurer to retain 1/2 p.^t c.^t as a compensation for his trouble allaush.^l 533: 4.

A true exemplification of the original record attest

Origen Storrs Seymour
Litchfield March 18th 1816 — Secretary

Proceedings on the Policy

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Rotheney — Reminiscences cont.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

III Insurance on Lives

[illegible]

[illegible] agrees [illegible] 2 BE 454

[illegible] 1 Mer 778, 79

[illegible] 1 Mer 007-70

The [illegible] of [illegible] [illegible] [illegible]

[illegible]

VIII Fire Insurance

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 407 [illegible] 554 [illegible]

[illegible]

[illegible]

[illegible] 1,[illegible]554 2 [illegible] 747 [illegible] 697,691 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

1 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

3 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

4

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

5 [illegible]

[illegible]

6

Planets

[illegible]

[illegible] or rather [illegible]

[illegible]

[illegible] Arte 2

[illegible]

[illegible] 3 BC 437 2 Cor 202 277 Lots 60

[illegible]

7

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] by the contract make themselves either

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Coll. 2d [illegible] 12, 13 to Flavor 173 Roots 789

[illegible]

[illegible] L. 2. c. 15 [illegible] 12 or Barnacle [illegible] 2 [illegible] Tolt - 7, p. 647

[illegible]

[illegible] 2 [illegible] Roots 70 [illegible] 590

[illegible]

[illegible] Liberine [illegible] 3 Leon. 228 Roots 1 Leon 29 Roots. 75 1 Rich. 38

10 [illegible]

[illegible]

11 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] $20.000, [illegible] $10000 [illegible] $15.000 [illegible] $10.000 [illegible] $5000 [illegible] $15.000

[illegible]

12

And when after the death of one of mortgagees the survivor paid the first bond, the survivor might have received it as received for him, in his individual capacity, & not as mortgagee. Litt. R. 3-5. 2 Wms. 476. For there was no need of a sole right to receive it as in the mortgagee.

14 [illegible]

unb.

15

Cook, Ch. I. 67

799

16

Form and account between Letters to be settled

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Because [illegible] intersection of alt & [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

18 [illegible]

II [illegible]

III [illegible]

[illegible] If there is a [illegible] [illegible] 347 wat. 234, 136, 210, 218, 240

19. [illegible]

(Tissellation of

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

24

[illegible]

[illegible] Bill for an [illegible] of a [illegible] [illegible] Bill appo[illegible] [illegible] 1832 & 2 Wm. c. 279

Commencement of Lecture

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

2 H. 86.606

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

The duty of [illegible] [illegible] are y[e] [illegible] of y[e] ~~umpire~~ arbs. & he cannot receive their report but must himself examine y[e] witnesses &c. But it has been held that where a party complaining did not request y[e] umpire to examine y[e] witnesses until after y[e] umpirage he was bound by y[e] umpirage. 4 J.R. 589 [illegible] in 2 Dallas 271 & 272.

The arbs. cannot decide a part & y[e] umpire a part. y[e] umpire must decide y[e] whole [illegible] [illegible] [illegible] y[e] question is not [illegible] but I think it a very plain one. Tho' such a course may be warranted by y[e] rule 4 J.R. 589. [illegible] [illegible] Kyd 103. Vide [illegible] Bacon 184 [illegible] Kyd 105.

[illegible] [illegible] [illegible] [illegible] (unless otherwise expressed) [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] authority [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 1 [illegible] 306 [illegible] 57 Kyd 106.

An award [illegible] [illegible] [illegible] [illegible] [illegible] determined [illegible] [illegible] [illegible] [illegible] [illegible] enlarged [illegible] y[e] [illegible] [illegible] [illegible] [illegible] 30 Kyd 115 n.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

It is said that a reservation to an arbitrator of a mere ministerial power is void. [illegible] such a piece of land should be measured by a surveyor. [illegible] 143 Kyd 12. [illegible] an award that A should pay to B so much a piece for land in certain [illegible] as C shall appoint that is void [illegible] [illegible] is a [illegible] award. [illegible] 154. 14 East 550.

It is a rule that arbitrators cannot delegate their authority to another. Hence an award that [illegible] shall [illegible] [illegible] is void. Kyd arb. B 20 # 11 84 [illegible] 126 [illegible] 127-13.
An award that one shall give another a release without mentioning the sum is void. Kyd says because it is a reservation of authority but [illegible] thinks for uncertainty. Cro. E. 492, 504, 783. [illegible] 71.

But an award ~~[illegible]~~ directing the substance of what is to be done in leasing of land to be fixed by another is good: so is [illegible] award [illegible] together with interest [illegible] ascertained from a given time is good. Kyd [illegible] 5 & 7. Cro. E. 710. [illegible] 50. [illegible] 515. [illegible] 71 [illegible] 128.

Where the [illegible] 35.

[illegible]

[illegible]

[illegible]

Requisites of an award

The award must be consistent with a reference [illegible] 174, 1401. The matter [illegible] comprehends only [illegible] [illegible] 2 Mod 310

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 140

[illegible] 44

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 1. Land^n 80.

[illegible]

[illegible]

[illegible]

[illegible] Co 1658

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 3 Lev 18 & 24. 1 & Deut 31.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 155 Lab 114-6.

[illegible]

[illegible] 10 Chron 155

[illegible]

[illegible]

[illegible] Lib 790.565

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 1882 Barnes.
403 Kyd 174

The remedy is obvious in a great measure. Remedy
[illegible] The sect. in this is ironic to
perform. Hence a non-performance of a covenant
is a remedy in ironic. [illegible]
[illegible] 1 [illegible] 1 [illegible]
be [illegible] [illegible] 1 [illegible] 11
276 [illegible] Hence there was a re-
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

[illegible] 179

[illegible]
[illegible] 1 [illegible] 354 [illegible]

[illegible]

"Where [illegible]" [illegible]
[illegible] 1[illegible] [illegible]

[illegible]

[illegible] 8 [illegible] 312

[illegible] Kyd 286 [illegible] 1. [illegible] Kyd 287 [illegible] 2. [illegible] Kyd 287

Pff in declaration [illegible] [illegible] [illegible] Pff [illegible] [illegible] Pff [illegible] [illegible] of [illegible] [illegible] [illegible] of [illegible] [illegible] [illegible] [illegible] [illegible] 2 [illegible] 15 [illegible] 258

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Pff [illegible] [illegible] [illegible] [illegible] [illegible] &c

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] But in an action for commission [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Pff [illegible] [illegible] [illegible] without mention of any thing about commission Pff [illegible] may [illegible] [illegible] 2 [illegible] 290 [illegible] 290-1

Where [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 675 [illegible]

Where an action is brought for non performance of [illegible] Pff after [illegible] for it [illegible] must [illegible] [illegible] [illegible] [illegible] [illegible] 24. 78, 157 [illegible]

[illegible]

[illegible]

[illegible] Cro Eliz 640 3 Keb 830. Kyd 291

[illegible] (21 Jac II c 16) [illegible] 316.

[illegible]

[illegible] 1 Keb 444, 454, 0 Ex. 2 Ld 1150, [illegible] 454

But [illegible] 116 Lev 300

[illegible] Cro E. 838 Lev 301

And if ye [illegible] we may not [illegible] non-performance [illegible] non-performance [illegible] 2 Keb 235 Cro J 339. 2 Buls 45.

[illegible] ye [illegible] he [illegible] must take notice of [illegible] Raym [illegible] 2 Kyd 301

[illegible] averment [illegible] Plf was not performed [illegible] 20 [illegible] 302

If ye Deft [illegible] performance [illegible] Plf may not [illegible] ye Deft's [illegible] Kyd 309 – 318 2 Lev. 05 [illegible] 320

Only Pl may in his replication [illegible] certain other things not mentioned in ye Deft's plea & conclude with a general [illegible] those things set out in ye Deft's plea" 1 Roll 426. Kyd 308-9

[illegible]

[illegible]

[illegible]

And the party in whose favour the award is may have process of contempt tho' he has obtained judgt on the award or bond this is no satisfaction, Salk 73. 10 Mod 333 Hyd 315

of contempt always dies with the party guilty of it, It is really a crime. Prec in Ch 223. 2 Vern 444. Hyd 315

If a judgt has been recovered & the person of the deft taken in ex.t an attachment will not issue. Hyd 315. 1 Burra 38 c. or it will be discharged if issued, Ex.n being a higher remedy & supersedes all others.

Granting an attachment is always discretionary for a contempt as such is not an injury to the party but to the Ct the Public &c. Hyd 317 330 (a). If there there is much contradictory evidence as to the fact of performance or if the case is manifestly a hard one the Ct will refuse the attachment. 1 Burr 278. Hyd 318.

When a submission is by order of a Ct of Chancery that Ct will in general entertain a bill for specific performance. But under a voluntary submission the Ct will not in general decree a specific performance! but it will do it where one party has accepted performance from the other. 1 Atk 74. 321
1 Eq. ca 51. 2 Vern 24. 3 P Wms 187. and 318-319-20, 323-4

Again if after an award made one party has agreed to perform it the Ct may decree specific performance. thus Ct has cognizance of Ex an agreement 1 Atk 74. 1 Eq. ca 51.

So where one party has encouraged the other to perform the Ct will decree specific performance 2 Vern 24. Eq d 320.

i.e. if Pltff has encouraged Deft to do acts preparatory to performance

Where parties have performed & long acquiesced in an award, Eq will prevent its being disturbed by a suit at Law, even tho deficient in some of its requisites. This is to prevent litigation
Vch R 46. Eq d 322.

Rules as to Clowns

[illegible]

[illegible]

[illegible]

But where [illegible] the Ct will [illegible] 312, 315, 8 2 Bur 210, 18 [illegible] 412, 390 But if there [illegible] the Ct will [illegible] 412, 13

[illegible]

An award [illegible] 332, 3

If an attachment is [illegible] the Ct of K.B. [illegible] agreement [illegible] will award a process for contempt but if there are strong reasons for [illegible] will [illegible] grant a process for contempt, it being [illegible] extraordinary 2 [illegible] 333, 339 a

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Usury

[illegible]

Usury is defined to be the taking or contracting for [illegible] interest [illegible] a [illegible] of [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] 1 Pa. 454 [illegible]

[illegible] the [illegible] reservation of [illegible] interest [illegible] is [illegible] [illegible] [illegible] [illegible] [illegible] is [illegible] [illegible] in usury. 9 B. Mon. 305; 2 Conn. 708; [illegible] 14. 70; 3 [illegible] 531 – 2 " 238; 1 Cal. 1,04 [illegible] [illegible]

It is said that a [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] unless the usury [illegible] S. C. [illegible] that [illegible] must be a substitute for money & [illegible] of being converted into money [illegible] contemplate a [illegible] for a loan of money.

[illegible]

[illegible] interest at a rate for a loan of money was at one period in Eng. deemed unlawful at C. L. until [illegible] 37 Hen 8 c. 9 – [illegible]

Usury

[illegible]

[illegible]

[illegible]

Usury

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Sec. 3, 4, 5, 7 [illegible]

[illegible] Sec. 10, 7, 1080 [illegible]

[illegible] Sec. 114 Co. 2 [illegible]

* "Asst" 48, 67 "Bills of Ex." 31

[illegible]

And a contract made in a foreign country with a resident citizen of the U.S. for [illegible] is valid [illegible] Sec. 107, 44 Cong. 33

This is an other opinion of Ld. Mans & [illegible] is gen.ly [illegible]

Ch. of U. S. [illegible] 3 Cr. Meals in [illegible] cont. [illegible]

[illegible]

A [illegible] upon a foreign [illegible] [illegible] Sec. 2 [illegible]

Usury

[illegible]

[illegible]

[illegible]

=2

5 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Usury

Usury

[illegible] are not with-in [illegible] By [illegible] is meant an agreement [illegible] [illegible] [illegible] (Tho' ye principal is not but at hazard at all ye cont. may not be usurious for no rate of intst is reserved, & perhaps none is to be paid)

[illegible] £30 [illegible] [illegible] Salk. 104 [illegible] 341 Cro. 4 [illegible]

[illegible] agreement* [illegible] 4 Bac. [illegible] Ord. 81 (*in consideration of forbearance) [illegible]

[illegible] interest [illegible] not [illegible] interest [illegible] Cro. 47 [illegible] of course [illegible] 353 [illegible]

[illegible]

Usury

[illegible] certain [illegible] excessive [illegible] interest [illegible] [illegible] [illegible]

Usury

If a man lends money & takes a mortg of some of a same annual value as by interest of a loan & is to take annual rents as a premium; it is not usurious: tho' a profit accrue, even dec Ord 53 Eliz S. 25

It has been held that if interest be received at a time of limitation, not exceeding a principal sum, to arise out of future profits by interest from the time the interest accrued is received, and the rent not paid 20 May 171 1 Rule 17 Eq 54. 102. 1 Va. This* was even held to be a Ct of B.R. to be a loan of £100 & yet an agreement is not usurious (* i.e. lending of £95 & taking an obligtn for £100)

It has been decided that by bribery & extorting a whole interest is justifiable 1 vol 54 Chancery 227 Ca on B 54 1 Vol 144 2 Vol 793 3 Vol 152 1 Rule 20 This has become a very universal practice

But a mere profit, from a loan is said to be usurious & invariable in Chancery Then rents must be lent or never mortgage a loan &c. [illegible] Ord 102 1 Va 1 Rule 195

In order to an incidental expense or profit from a loan is reasonable & allowed in an account above an estimate of loan? Hoy. [illegible] is made on receiving the money & will be [illegible] Factor's commission is often allowed. 2 RR. 52 1 B. R. 144 Ord 55 Eliz 2 vol 1445

Usury

If the incidental charges are high they will create a strong presumption of usury. Holt 200. Cowp 58. 59(b) Peake's R 200. 7 D R 185 1 East 92. 1 Camp 177 — [illegible]

The discount of a bill or note by a deduction of more than the established rate of interest is usurious — This does not hold where a note is fairly in market, in such case like any other property it may be bought at any price, if the seller indorses it it is usurious clearly usurious 1 Esp 176. Peake 224. 5 Esp 119. 4 Taunt 464. 7 Conn R 185. 175. 1 Camp 177. 7 D R 185 4 Ella's 102. 1 Pk 55.

And this rule is so strict that where only 5 pr ct was deducted & the sum was advanced part in money & part in bills, with rebate of interest on these bills this was held usurious. 1 East 92. 92. 1 B & P 144. 154 Peake R 200.

In cases of extra allowance it has been said that usage may prevent the allowance from being usurious — Cowp 57. 8 Camp 112. 2 D R 152 But it has since been held that no usage can controul the statute: usage can merely rebut the presumption of intention to evade the statute — 2 Day 413. 1 B. & P. 144. Peake. R. 200 7 D.R. 185 1 East 92

Usury

Where the question of intent to evade the stat is raised this is for the jury Ord 59 a th 1 B & P 144. 2 Lay 483.

Even artifice to evade the statute can serve only to bring the case within it — the words are directly or indirectly 2 Burr 704. 1 Shower 8. Ord 68: 9.

There are certain enumerated contrivances wh are called badges of usury.

II. Annexing a colourable risk to the loan — Hards 418. Ord 65. 39. 72. 2 Ves Jr 143

III. By making a virtual loan under the form of a sale — as where an embarrased man applies for a loan & the person applied to offers to & does sell goods at an exorbitant price & the borrower is to raise money from the goods — Ord 64. 74 77. 8. 57. 1 Atk 351. 2 Ves 155. 1 Eq: ca: 91. Cinp 112 4 Ves Jr 678.

III II. The exchange — This contrivance is as follows. Money is lent & secured by a bill on a fictitious person abroad — by collusion a protest is obtained & the drawer is charged with the incidental expences of a foreign bill actually protested Ord 66

IV. Lending of stock to be repaid at a given time with an agreement to pay interest on a greater sum than a market price of the stock Ord 46 a. v. 79–81. 61.

Usury

V. [illegible] a share of profit or [illegible] interest [illegible] 1 Ann c 00 [illegible] 70-81 [illegible]

VII. [illegible] for a [illegible] [illegible] 7 Ann c 00.

VIII. [illegible] 6 Ann c 00.

VIIII. [illegible] 6 Ann c 6. [illegible] 115. 182.

[illegible] expedient [illegible] [illegible] 20 x [illegible] 20 [illegible] 2 504 [illegible] 182 [illegible] 76.5

[illegible] 143 [illegible] 042 [illegible] 6 [illegible] 390 [illegible] 92

Usury

The cont. is not prima facie usurious. He who says it is so must prove it. But to take a case out of [illegible] principal [illegible]. 1148. [illegible] 350. 2 [illegible] 154. 2 B & P 863, [illegible].

In a case of Bottomry the risk is real [illegible] a cont. is usurious [illegible] 43 [illegible] 73. It is very difficult to determine when a risk is real & when not.

[illegible] Inadequateness of price on a purchase or [illegible] tho' it may excite a presumption of usury yet does not *per se* constitute or prove usury, for every man has a right to make a hard bargain. But if it commenced with an application for a *loan*, it would then be *prima facie* evid. [illegible] 242 [illegible] 27 [illegible] 925. 2 [illegible] 7. 1 Ves. 164. 2 B & P 859. 3 [illegible] 390. The intent of the parties [illegible] must decide (Str 1243. Doug. 736. 3 T R 538; 9. 1 B. & P. 151. 2 Doug 491. 1 Esp R 178) the intention being the criterion. Corp. p. 112 ~~Exor~~

[illegible]

This proposition then is a cardinal one which is easily [illegible]. When the transaction which is not in form a loan but is claimed to be a disguised loan the Qu is whether the parties intended it [illegible]

[illegible]

Usury

Exorbitance of price on ye sale [illegible] [illegible] : but [illegible] must [illegible] [illegible] 357. 2 Ves. 155 [illegible] 64, [illegible] 69.

The case [illegible] [illegible] 40 [illegible] 114, [illegible] 700. [illegible] 80 / comes under ye same rule

But [illegible] however exorbitant & inadequate ye price may be

[illegible]

[illegible] which he sold y^e [illegible] [illegible] 113.114.

[illegible] usury [illegible] 2 [illegible] 850 [illegible] 300 [illegible]

[illegible] [illegible] 131. 2. 180

Usury

[illegible] Ex parte [illegible] 2 Bl R 804. 3 Ch R 275 and 84.

Whatever the form of a transaction, the subsequent acts of the parties may test the merits of the case, & may form a criterion for decision.

[illegible] afford ev. of usury. [illegible] parcels referred to [illegible] interest, yet affords some ev. of original agreement. 2 Bl R 804 and 87 Eng. 37 Nichol 591 Ev. 18.

Usury ev. in a deed is invariably parol ev.: it may otherwise be avoided the negotiation 5 Co 69 a. 9 11 26. Eq. J 252. Pid Ca 119. 22 Ic 347. 3 J R 474. Por. E: 477.

[illegible]

No part of ev. is admitted to show that a c[illegible]* is prima facie usurious, is not so in where a mistake was made in a sentence. Eq. E 501 1 Mad 107 Eq. 86. 98 Eq. J. 508 677 2 Bl R 865 1 Bl L P 144 151 * under seal

If a bond* is taken for principal & legal interest only; but a separate security for illegal interest, and a separate security for both usurious (Eq. 50 5 Ed R 394 Ewch 770 796. 112 114 Eq. 228. 1 Fla. 292. 2 J R 238) for y whole cont taken together is usurious

* or specialty of any kind

Usury

It is a question here whether a legal interest or a usual amount for illegal interest of which is unconscionable cannot be recovered back [illegible]

It is said that the question of transaction not in a form of a loan, is one; must be determined by a jury, it is said

I think a jury must find all facts on which the Court of Equity decision, but they being ascertained it must decide whether usurious or not. Lum 790 Cro 507 508 Poth 345 2 Ch 247 Cro 1243 Ord 87

What is a loan, & what not, is a question. Lord L. So of a sale & hire & Court R. 192 As to the question whether a transaction is a loan or not is not a mere statute; in order to determine it, the distinction is, it affects a transaction in the form of a loan: but it affects being ascertained, it is a question of law or not is a question of fact. 3 Ch R 578 9. Cro R 178 2 Bing 90 102 P 17. 2 Comm. 142 [illegible]

There is a distinction between a reserving & receiving of usurious interest; the effect for of reserving is it of making a contract void: receiving usurious interest is usurious even received since law it is also void. Lum 707 Lord 78 Cro 91 [illegible]

Usury

The receiving of illegal interest does not affect the debt but incurs a penalty under [illegible]

A security given in [illegible] made on a usurious [illegible] the receiving of rent [illegible] it is void [illegible] 37, 8

A security given [illegible] person and [illegible] person commander [illegible] A lends to B [illegible] is indebted to C [illegible] Court [illegible] 47 [illegible] 344 Comm Rep 108

The rule is [illegible] in a tender [illegible] in a security [illegible] 344 Cro 108 [illegible] Court [illegible] a security given as [illegible] a usurious [illegible] 37 this is in effect is a [illegible] 1 Cont 19

Release [illegible] bond [illegible] a counter [illegible] from a principal to a surety is not usurious 2 Lev 155 Cro C 642, 588 Mod 73 Ord 100.1

It has been held, that if a surety [illegible] a usurious [illegible] 3 [illegible] 63 Cro 106 [illegible] it is no concern of a surety that a bond was usurious

Usury

If security originally valid can become void [illegible] or discharged by an usurious contract. Every cont. is void if not clear in title. 1 Salem 294 Cro Eliz 197 Cro Jac 188 8 Rep 98 1 Ld Raym 1 Ch Ca 102 [illegible] 2 Ch Ca 102

~~Not to be confused~~ If a minimal cont. is [illegible] a usurious contract usurious security does not merge in original contract 11 Ch 462 1 Salem 291 [illegible] 390 1 Ch Ca 92 Cro J. 20 2 Burr 1078 [illegible] 1 Rand 290. Not removing valid by lapse [illegible] 105a 1 Ch Ca 92. [illegible]

But if one usurious cont. or security is made in consideration of another by same parties or lender is unable to pay former note, for by mutual agreement after the usurious contract [illegible] 2 Ch 391 [illegible] 390 Salem 195 [illegible] 2 Ch Ca 411

But if a usurious security is assigned to a bona fide holder for good consideration by original debtor given a bona fide in lieu also assignment of a security a bona fide to receive payment at least bond is [illegible] 390 [illegible] Ch Ca 105a

5

If a security originally void is transferred upon a usurious consideration, previous contract [illegible] void, it effects of a [illegible] bona fide [illegible] the original [illegible] no title [illegible] the [illegible] note. [illegible] a [illegible] assignment being usurious

Usury

But if a bona fide transfer of the
[illegible] forfeit for said consideration, it cannot be
recovered in a action of usury against the transferee
in an intermediate transfer cont. for
[illegible] not be recovered. But a forfeit can
not be recovered of a second lender or a innocent
[illegible] an accommodation consideration. A second
bona fide person not liable if no notice
[illegible] 1 East 92 [illegible] 2 Q 4 Ore 175 Eng 3 [illegible] 5 Ch B
59.4 8 St. 300 [illegible] 41 Ala 175 [illegible]
1 Ch B 170 [illegible] 110 [illegible] 102 [illegible] 92 [illegible]
59.4 "Bills of Exchange" 29 [illegible]

If a usurious [illegible] a
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] 10 [illegible] [illegible] [illegible] 184 10 Mich 121
3 Dev 350 [illegible] it is not [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] 1926

A cont. or [illegible] reserving more
than legal interest is not [illegible]
[illegible] [illegible] [illegible] 2 Mon
307. Ore 103 d 10 [illegible] 1 Ore 253 [illegible] 14 [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] 134 [illegible]
[illegible] 1 [illegible] 96 [illegible]

Ulsuny

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Usury

1. [illegible] when a negotiable [illegible] negotiable is [illegible]) [illegible] in [illegible] [illegible] not [illegible]; [illegible] not [illegible]

2. [illegible] interest [illegible]

To allow a recovery in the cases in wh. it is forbidden (by agreement), would be to defeat it.

A Lender or Creditor cannot recover his debt nor can [illegible] alternatively [illegible] for ~~[illegible]~~ sues [illegible] Law. 307 and 10, 91 [illegible] Trover [illegible] tendered [illegible] 174 and 111 [illegible] tender [illegible] The same rule [illegible] maxim [illegible] who seeks [illegible] 58, 11 [illegible] 149 2 [illegible] 170 "Trover" 64 "Bailment" 30

Pleadings

Pleadings

If a action is [illegible] So I trust [illegible] cant. 2 Burr 1010, Ord 00, [illegible] 70, "Pleadings" 59

Usury

If an action is brought in debt on usury & defence of usury must be specially pleaded Stat 12 Geo 1 Cap 32, 4 2 Bl R 1108 3 Bul 301 Cro 90, 1, 2 general plea is inconsistent with usury.

In plea of usury, the contract upon which the money is demanded, states, he must allege a amount of a principal, & amt. of interest received Lo Ld Ken 525 12 Mod 385 Cro 92

But if judgt has been once recovered on an usurious contr. of judgt cannot be impeached for usury, "an the final judgt not set aside" is conclusive forever as to parties & privies * i.e. not otherwise Lo Ro. E. 25 Cro 82 3

If then an action on debt on single bill is brought on judgt. - Def cannot plead usury Cro E. 588 1 Roll 94 5 2 Bro 147 "Usury" 434

An action upon the case will not lie to be relieved by a judgt Cro. E 25 Cro 83

If a usurer sues and on usurious contr. gives a new security, bona fide & knowing usury to be part of the thing sold yet recovery is over, for it is a same as if judgt had been in rem - Bro 1, Cro 103 Ru. 44

Usury

[illegible] a [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible]

Usury

Penalty

The receiving of usurious [illegible] receiver to a forfeiture of three times the value of the [illegible] lent [illegible] imprisonment [illegible] others [illegible] Stat.# [illegible] 10, 11, 13 [illegible] The borrower was formerly considered [illegible] criminis [illegible] [illegible] [illegible] 0. 21, 2 #[illegible]

Under [illegible] the receiving of usurious interest [illegible] the receiver to a forfeiture of [illegible] sum lent. To convict a lender he must have received [illegible] [illegible] 235 [illegible] 205 [illegible] [illegible] 214 n 1 The receiving of more than lawful interest for forbearing [illegible] [illegible] has been made [illegible] 117 n [illegible] 744 [illegible] cannot convict for a voluntary donation [illegible] To convict for offence usury must have been received in money or money's worth. Hence a subsequent [illegible] is not [illegible] is not receiving [illegible] interest [illegible] 118 [illegible] 80 The [illegible] [illegible] of illegal interest. The offence is not complete till more than lawful interest is received [illegible] 195 [illegible] 120 [illegible] 56 [illegible] 120 [illegible] [illegible] 120

Hence if a man is [illegible] £ 100 [illegible] [illegible] offence is not complete [illegible] interest is received [illegible] 195 [illegible] 53 [illegible] However [illegible] discount, [illegible] illegal interest is received at the time [illegible] offence is complete at moment of discounting 2 [illegible] 702 [illegible] 102 [illegible] 195 [illegible] 26 [illegible]

Usury

[illegible] £100 [illegible] with usurious interest, [illegible] £100 or £95? [illegible] £95 is given [illegible] the lender has received no interest. [illegible] the lender lent £95 [illegible] £100 [illegible] interest on £95 [illegible]. 2 B. & P. ~~[illegible]~~. 381 7 T.R. 180

By a [illegible] a loan of £100 [illegible] interest [illegible] 2 [illegible] 103 3 [illegible] 150 262 (Lowe 223) [illegible] £100

[illegible] where interest is paid at different times each payment [illegible] interest [illegible] 2 B. & [illegible] 38

[illegible] penalty is recoverable [illegible] in action [illegible] or information [illegible] that an indictment would not lie. [illegible] 123 But this decision is not correct [illegible] particular mode of prosecution is pointed out by St., Usury is indictable at C. L. 1 [illegible] 421 3 [illegible] 391 11 Mod. 170 [illegible] Law 44 where usury [illegible] a new offence [illegible] must be pursued. [illegible]

Stra. 816

Usury.

[illegible]

[illegible]

[illegible]

Usury

Under what circumstances a [illegible] contracts interest

Even interest is allowed on a judgment recovered for money lent. See Chambers 2 N. R. 200 & Cases 50 & 51, 120

Even there no express agreement for interest, if the money was lent on an express promise to pay it on demand, it seems it may be recovered. 7 T. R. 124 & Bell 701 2 T. R. 58 & 3 Burr. 1205 1206

But [illegible] is a contract made in Texas is not usurious. 1 N. & W. 95 & 1 B. 213 But interest is a penalty in a new law, & does not run [illegible] unless the express contract. not correct. Semble even if it is usury not forfeit in 2 B. & P. 85, 370 & 3 B. & P. 200 & 2 N. R. 200 & Dan 284

It does not matter in fact usury is not if it is due immediately. 3 B. & P. 29 & 2 B. & P. 200 & Bell. 751 4 Dan 251 2 Burr 1097 & 1128. Fitzmaurice v. Bayley & Cases cited

There is no interest allowed by court in error, but it is not yet found that it should be so. 5 T. R. 58, 3, 78 Dan. 72 & 8 1 B. & P. 24 Burr 1097, 1128 4 Dan 251

Another case concerning certain or [illegible] usury interest from a time of the kind [illegible] Cowp. 700 & 1 Bl. R. 701 2 T. R. 58 & 1 B. 213 Dalton v. 200 & [illegible] an obligation of the kind always interest from a [illegible]

Usury

[illegible] [illegible] [illegible] [

Usury

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Criminal Law

That branch of a Municipal Law which has of Public Wrongs or Crimes is called Criminal Law 4 Bl. 2.

Public Wrongs include all crimes & misdemeanors i.e. all offences vs Municipal Law

A Crime or Misdemeanor is an act committed in violation of a Public Law forbidding it; or an act omitted in violation of a Public L. commanding it

Crimes are of commission or omission 4 Bl. 5 Crimes & Misdemeanors are strictly synonymous in L. But in com. accentation a crime denotes an offence of a more atrocious kind: a Misdemeanor one of a less heinous character &c.

A Crime is a violation of a Public Right A civil injury is an infraction of some Private Right But a crime ordy includes a civil injury also But a crime as such is a violation of a Public Right A civil injury as such is a violation of a Private Right, as a Battery, Libel Theft Robbery Arson Larceny Murder &c. In all the cases here can be no civil remedy, for a reason mentioned Post

Some crimes on the other hand do not involve any civil liability. Its merits of these created by positive law; as smuggling or any other act in defraud of the Revenue: here no individual is injured, as q. L. regards it: it is a Public offence merely

In other cases a civil crime may or may not involve a civil injury to any individual; as a Public Nuisance. In these cases i.e. where it does involve a civil injury a civil or L. is to give as far as possible a private redress one to q. Pub. for a crime wrong & other to a individual by a civil action L. B. L-7

But where the offence amounts to a Felony there is no redress awarded by a C. L. for a civil injury, for it is merged in a crime 1 Mac 283 Bac n. 1. 281 Q. Rot. 55 - This rule is said to be founded in policy of a L. L. or in other words to prevent a commutation of Felonies A. G. says it only the felonious act or a trifle seems to be of a punishment of a Pub. Wrong renders a civil remedy impossible; for a Felony occasions at C. L. a forfeiture of a life real & mon of a Ind. in Pub. Right is a moment a a right of an Individual Fr 873 C. L. R. 572 & 3 E. & B. 3. 2. 7. 1 - ange

But a a crime not amounting to a Felony injures an individual, he may have his remedy, as Battery Libel Priv. Nuisance &c For q. L. leaves room for private redress & 3 E. 7

In Court without any Stat. at all this doctrine of merger is not regarded, And at the Sessions remembrance civil remedies have been held in 4 cases of Perjury, Arson & even in Murder the Court have no jurisdiction in crimes except in a case of depriving Mortis Mare Zines or Abd & Manslaughter.

The right of punishment is authorised by L. & nature & in some cases by divine L. It seems to be a right of punishment exists in a state of nature in each individual Hence if one is injured by another he takes a punishment into his own hand he is judge & executioner.

The right of Society to punish is said by some to be derived from y consent of its members either express or implied & is therefore founded in compact But y foundation is not broad enough to justify all punishments Crimes mala in se may be so founded But some offences never did or can exist in a state of nature: these then cannot be derived from consent or compact: such as mala prohibita 4 Bl 8, 9 Vattel's L. of N. 74 Paley Mor. Phi. 341 2 Burlamaque 142

But y most rational ground or y right of Society to punish in every case is, it of necessity to defend its members: y wh is expedient is agreeable to y L. of reason & justice It would be necessary to state of Society without y right 1 Hale P.C. 13 4 Bl. 13 Vattel Preface 11 Paley 349

The end of human punishments is the prevention of crimes; this is the only justification. This end is to be attained either 1 By reformation of offenders 2 By deterring offenders or 3 By deterring others from a commission of like crimes 1 Bl. H. 2 Rich. M. P. 323

Of the various sorts of common crimes

In gen. all persons are liable for to be punish'd for misbehaviour to a L. except those specially exept'd. Crimes are actions wh. proceed from punishment are reducible to a single consid.n. viz. want of all, want of moral power. For to constitute a crime there must be a free voluntary act or omission wh. must concur. 4 Bl. 20. No one is punishable for an act with wh. he did not conform. In civil cases injury is punishable whether it will was concurrent or not 1 Hawk. 2.

The want of will exists on 3 bases

1 Where there is a defect of understanding: for tho' although there is no will, no moral power. Hence Infants under a certain age are punishable for no act whatever; for they are deemed incapable of distinguishing to their good 1 Hawk 1. 2. 4 Bl. 22

When a offence consists of omission Infants are not generally punishable at C.L. of any age under 14 For it is a maxim of L. that no neglect is imputable to an Infant 4 Bl 22 1 Hale P.C. 20.2

The age of legal discretion is 14 years, under that age a presumption is in favour of an Infant But as to all ages under 14 to 7 a presumption in his favor is rebutable & he may be punished in capital cases On the other hand an Infant under 7 can never be punished: a presumption in his favor cannot be rebutted & and an Infant under 21 is as much liable for Positive Crimes as any person 1 Hawk 2 4 Bl 23, Hale 27 Fosters Crown Law 72

Whether an Infant between 7 & 14 can be punished for any misdemeanor i.e. any crime short of Felony is uncertain

On a same principle Idiots & Lunatics are not punishable during the mental incapacity for any act. They have no understanding — no will. Yet if a Lunatic commits an act in a lucid interval: he has then a will as much as any other person 4 Bl 24 Hav. 2 Hale P.C. 31

Formerly madness whether a person and Lunacy was liable But it is now settled that although he is deaf & dumb he may be even capitally punished if ideas may be conveyed to him by signs & he can distinguish between good & evil i.e. if he is "not idiot" 2 Hawk 492 1 M.N.R. 158 1 Bl 324

And as a person who commits a forbidden act in a state of unsoundness can't be punished, so if a person in possession of understanding commits an act & then becomes insane before arraignment he can't be arraigned, if after trial before verdict indt, indt can't be pronounced if after indt is pronounced he becomes insane before sentence or after sentence & before execution he can't be executed. Hale 21 4 Bl Ca. 395. Hale P. C. 370

And if in any case it is doubtful whether a person is non compos or not, the fact must be tried by a jury — & this in any stage of a proceeding 4 Bl 25

A Lunatic or Madman can be guilty of no offence but one who incites a Madman to do an unlawful act is a offender — a principal in the offence 1 Hawk. 3 Keeling 53 4 Bl 35
But voluntary intoxication is no excuse for crime — Indeed L^d. Hale says it is a great aggravation C. L 242 4 Bl 256 1 Hawk. 2.3 Hale 32
But in case a habitual drunkard mind is produced by a long course of intoxication a jury presume it otherwise, for if loss of understanding then becomes a disease

III Lucum Furiosum is a kind of madness when the understanding the sufficient is not exercised Here a wild does not concur with act — it is neutral

Hence if one commits an unlawful act by manifest chance or misfortune he is not punishable: as if a man in doing a lawful act should kill or destroy a person of another. But he should be civilitiable 4 Bl 20 1 Hawk 5 c 16. 124 Keeling 128 This rule supposes a voluntary act to be innocent

But if one intentionally doing an unlawful act, unintentionally does another unlawful act he is not excused from a tort For every man is liable for the consequences of his own unlawful act If A in attempting to shoot B's horse accidentally shoots a person he is guilty of homicide 1 Hale 30 4 Bl 27

Ignorance or mistake in point of fact will also excuse a forbidden act for here, there is a defect of will Ex. A man in a dark intending to enter his own door enters that of his neighbour; he is not liable criminaliter tho he might be civiliter So when one intending to kill a Felon who was in his own house killed one of his own family 3 T. R 514 Raw 40 7 8 1 Bur 35 1 Haw 5. 110 Cro. C. 598

IIII There is also a defect of will arising from compulsion or necessity wh. will excuse a perpetration of the forbidden act Here a will chooses a act or at least does not answer against it Thus if a legislature enacts an iniquitous L. plainly contrary to religion & morality, a subject is excused in obeying the L. for he acts under compulsion of L. & from legal necessity 4 Bl 21. 7 8

A Feme Covert is in many instances excused when she does an unlawful act thro' a coercion actual or presumed of her husband: as in ye case of Treat or Burglary — 1 Co not in all treasons 31-7 Comb 203 2 Ro 28 — but neither a child or servant as such is excused for any crime committed in ye command of a parent or master: ye excuse extends to no other relations wch ye law takes thro' mere weakness in mitigation of guilt 1 Hawk 30 3 Inst 34 - 2 Ro 28, 9 Hale 47

Another species of compulsion occasioning a defect of will is duress "per minas" i.e. coercion exercised over another by threats of death or great bodily harm It does not excuse all offences but chiefly those wch are in ye power L. — as Treason 1 Hawk. 5 4 BC 30 1 Hale 50

But even "duress per minas" will not in gen excuse offences wch are mala in se" i.e. wch ye L. of nature ought to have forbidden with death unless he wd kill B or wd will not excuse him St

Another kind of necessity arises from legal compulsion, wch will excuse acts wch would otherwise be crime. A ministerial officer as a Shf is bound to make an arrest & is opposed in doing so he may oppose ye resistance by any necessary force or violence to overcome ye resistance, even to ye taking of life 4 BC 21 Indeed he is bound to do ye 1 Hale 53, 4

But it seems settled by y C. L. yt no person has a right to steal y prop. of another to secure himself from personal suffering however great Cases agree in yt 4 Bl 31 1 Hale 54 To hold y contrary would be to hold yt y end sanctifies y means

Criminal Law recognises diff degrees of guilt, between diff parties in y same crime, wh leads to y distinction between principals & accessories One may be a principal in an offence in two degrees A principal in a first degree is he who is a actor or immediate agent or perpetrator of y crime

A Principal in y second degree is one who is present aiding & abetting in y perpetration of y crime but who has no immediate agency in y crime But it is essential he should be present Bl 34 Dougl 197 1 Hale 615 Stor. 97 According to Hawk. both are principals in a first degree This is opposed to all y others 2 Hawk. 258 326. 441 Contra 2 McN. 523, 7, 8 4 Bur 2075 1 Hale 437

The presence necessary need not be an actual standing by y perpetrator - or in sight or hearing A Constructive presence is sufficient As if A & B agree to commit a crime with an agreem^t y^t A shall be y immediate perpetrator - & B shall at a distance keep guard B is considered - in y presence of A 4 Bl 34 Fost C. L. 350 Dougl 197 2 McN. 539

These proceeds here as well as the rest to if Felons as C. L. Felons. The act does not extend to make accessories 1 Hawk 104 2 Mich 525

The son. Rule as thus of a principal must be present actual or constructive. But even a constructive presence is not universally necessary to make one a principal in the first degree, as if one prepares poison in the room & it shall be taken by another, he is a principal in the first degree tho he may be at an inadequate distance at the time of taking it

So if one should let loose a ravenous beast wantonly for the purpose of destroying a person he is a principal in the first degree 4 Bl 34.5 Foster 349 Reading 56 2 Hawk. 443

An Accessory is one who is not the actor nor present at the perpetration. He is one who is in some way concerned in the commission of the Felony either before or after the commission 4 Bl 35 The L. distinguishes between principals & accessories only in those felonies not amounting to Treason. In high Treason all are principals on account of the atrocity of the Crime. Indeed by the Eng. L. a bare intent to commit Treason is itself Treason. See Lewis in 4 Bl. 3. 2 Hawk 439. 440 Co. L. 57 12 Co. 87. 2 4 Bl 35

And as an universal rule whatever will make one an accessory in Felony will make him a principal in Treason 1 Hawk. 58 2 " 430. 40 4 Bl 35 There may be accessories then in Petit-Treason, Murder & all other Felonies wh. admit of premeditation, as Manslaughter & even these admit of accessories after the fact

In other crimes under y degree of felony there can be no accessories but all who partake in y guilt of y offence are principals. In mere misdemeanors there can be no accessories, for minute differences in degrees of guilt are not considered 2 Hawk 441 1 Hill 182 Co. L. 57 Cro. E. 750 1 Co 81 1 Sid 312

An accessory cannot be guilty of a further crime wch is principal is guilty of. Hence if a servt procure a Stranger to murder his master, y Stranger being guilty of only murder, a servt is guilty of murder only: but if y servt had murdered his mas. himself he would have been guilty of Petit-Treason to of a Wife. But if y servt had been present he w^d have been guilty of Petit-Treason he being Principal, tho' y Stranger would have been guilty of only Murder to of a Wife. 1 Hawk 182 2 Hale 445 3 Bl 36 1 Russ P.C. 075

Accessories are of two kinds 1 Accessories before y fact. 2 Accessories after y fact. An accessory before is one who advises or in any way procures one to commit a felony. Ib. L he who abets another in an unlawful act is accessary to all y natural consequences of y act: as if A abets B to commit a Battery on C. & C is killed, A is accessary to y murder, or if A abets B to poison C. & B stabs him, C^t A is guilty as accessory

But he is not accessory to any thing wch is not & not directly following from it: as if A abets B to poison & B murders C. A is not accessory to a murder, or if A abets B to rifle C's pocket & B murders C. A is not accessory to y murder L 36 5 2 Mc 4.5 57 2 Hawk. 441. 447 Fost C. L. 370.1 Rivo. 475

Merely to incite or induce another to commit a felony or another offence is a Misdemeanor at C.L. for a Crime is not actually committed 2 Inst 179 1 Mod 101 2 Ld Raym 1377 3 East 581 If one having abetted or requested another to commit a Crime retracts his advice before a crime is committed he is not an accessary 2 Hawk 445 East 354, 1 Hale 537

The bare concurrence in intended felony does not make an accessary: it is however much at C.L. of misprision of felony. Misprision has sometimes a criminal object or duty. 2 Hawk. 447 4 Bl 121 Persons accidentally present at a commission of a felony who do not endeavor to prevent it even tho' they have or mean so doing it are guilty of a Misdemeanor. A Minor is not excused merely of age; for it is a crime of omission & no capacity is implied in an infant 2 Hawk. 442 Roy 50 Hawk. 15. 117

An accessory after a fact is one who relieves, receives, comforts or assists a felon knowing him to be such & to be felon 45 2 Hawk 448. 18 Sr. 204. 5 But a relief must be with intent to hinder public justice. Just to harbor a felon even in aid with necessaries he hangeth of humanity or charity, does not make a party rendering him an accessary 4 Bl 38 The receiving or receiving stolen goods knowing them to be stolen did not at C.L. make a party an accessary Geo 1 St 5 c. nn. & 4 Geo. 2d. 2 Hawk 450 Geo. C. 88 Mear 4.5 1 Ld 88 1 Hawk 30 But 1 L. in ye case a accessary is made a principal

But to make one an accessory after the fact to a Felony the Felony must have been complete or consummated at the time of the assistance afforded 2 Hav. 451 4 Bl 38 Because at the time of the assistance afforded the party assisted was not a Felon

A Feme Covert is excused who aids her husband, altho she knows him to be a Felon Because he is presumed to be under the coercion of her husband 4 Bl 389 2 Hawk 451 1 Hale 47 Hale 621 Sewer of the Husband assisting the wife

If one is indicted as accessory to the principal Felons, proof that he is accessory to one only will support the indictment Cleveland 1 Mc. N. 540.

It is a Gen. Rule that C. L. accessories are subject to the same punishment as the principals. The St. of Eng. has made a diff. criterion of punishment of accessories after the fact & accessories before the fact

Formerly the accessory could not be compelled to answer to an indictment until his principal was attainted. For until he is attainted it is said there can be no proof of his guilt Now he may be compelled to plead, tho not put on his trial, unless the principal consent or the accessory himself wishes it: or unless a pardon is filed with him 2 Hawk 453. 5. 7 4 Bl 40, 323. 4 Leach C. L. 15 For there can be no accessory without a principal By St 1 Geo. 2 the accessory may be tried tho principal is not put out for a misdemeanor, not for the Felony 2 Hawk. 453 4 Bl 323. 4 Leach C. C. 10

A principal is neither an accessory nor misprisoned for. There is no principal. If a man be attainted as principal & afterwards is found an accessory can not afterwards be. Hawk; for in no case first & attainted crime & reversed, subsequent is reversed. His quit is void here 2 Hawk. 452.3 4 Co. 43 1 Hawk. 28 Roll 77

But it is no defence for an accessory to show that the attainder of a principal is erroneous, for a fact more erroneous is found, for reversed 2 Hawk. 452 The death or pardon of an attainted principal will not avoid an accessory, for a death or pardon does not prove a wrong attainder as him individual or against oth. 2 Ld. 541 4 Co. 43 4 Bac 477 1 Hawk 453. But a death or pardon of a principal before attainder, for after conviction misnomer is accessory. For conviction is no ev. unless followed by judgt. But Semble in a Ind. St. Penna. 4 Bl 323 2 Hawk 453 Leach 17

A fine is deemed an accessory, it may be alternately treated as principal. But if one has been acquitted as principal & perhaps were it doubtful whether it can afterwards be indicted as accessory before the fact. See Mc H. 4 Bl 40 Foster 301 2 Hawk 319, 30 Rule 725.0 ! 2 Hawk. It may be indicted as accessory before the fact See 1 Mc H 400 It may be treated as accessory after or after fact

The indictment for an accessory need not allege that the principal committed a felony, it is sufficient to allege that the principal was been convicted and attainted 1 Ld Raym 562 Bac 2 Hale P.C. 223

But a accessory on an Felon may convert a principal felon or felons, a felon is principal, for a record of a principal felon is as to a accessory "res inter alios acta" 2 Hawk 451 4 Bl 324 Foster 121 355 Cl 118 2 Hale P.C. 227-7 for when a principal felon accessory are tried together a accessory may discharge principal felon the principal felon discharges his accessory quit 2 Hale P.C. 223, 4

Felony

Felony is any offence wh. occasions at C.L. a total forfeiture of a goods or lands or both, of a offender 4 Bl Ch. 3 The consequence of a crime gives it its name Felony formerly signified a forfeiture of a fee Afterwards it was used to signify a offence wh. occasioned a forfeiture of a lands; after those offences wh. occasioned a forfeiture of a goods only or a lands only of a offender 4 Bl 95.7

Treason is strictly a Felony because it occasions a forfeiture of a goods & lands But not so now It is a crime done to their, by usage 1 Hawk 89 4 Bl 94.5, 98

Capital punishment is not a necessary consequence of Felony the almost agreed numerous Felonies not involves, as suicide, compelling or chance-medley see Hawkins vol. 4 Bk. 1 Ch. 13 No. 11. 208 Some can. Offences are not Felonies because the occasion no forfeiture Hawk. vol 4 Ch 5.

The Felonies wh are punishable with death are followed by a forfeiture of all lands as well as goods & chattels Co. L. 391 4 Bl. 95 Hob. 97 but by modern usage word Felony is enough to avoid Cap. Crimes without Treason Hence if a St makes a new Felony y L. implies y offence shall be punished with death but if y L. omitting annexes cap. punishment to any offence without declaring it to be a Felony it is still called a Felony because of the punishment 4 Bl. 95 Hob. 198 1 Hawk. 105 Co. L. 391 However a St. mobilis an act under pain of forfeiting all ones mov. y offence is punished as a Misdemeanor, not Felony, Hob 210 Hawk 105 Co. L. 391 For it is a gen. rule of construction that no offence can be made Felony w ambiguous words.

Those C. L. crimes wh. in ing occasion a forfeiture are now called Felonies altho' no forfeiture accrues to any Felon now except a partial forfeiture in a case of Manslaughter

Clergyable Felonies are those in wh. a benefit of Clergy is allowed wh. is in effect a species of pardon exempting y Felon from y punishment of death tho' not from a forfeiture of goods, tho' it does of lands 4 Bl 378. 333. 387 2 Hawk. 236 Mich. 213 By y E. 2. clergy was allowed in petit Treason & most Capl Felonies It was not allowed in petit Larceny & mere misdemeanors, nor in Treason by reason of y atrocity of y Crime The St. 25 Ed. 3 sanctioned y previous exemption 4 Bl 360-374 2 Hawk. 479

This exemption was afterwards extended to every one who could read for if he could read it was conclusive of y he was a clerk ecclesiastic 2 Hawk 474. 5 2 Hale 372-4 4 Bl 365-7 but the females were not exempted whether they could read or not, for females could not be Clerks But by St James II, Wm & Mary & Anne. y benefit of Clergy where y offence was clergyable was extended to all persons indiscriminately 4 Bl. 367-370

Still when a person not an Ecclesiastic received a benefit of Clergy it did not exempt him from all punishment, but from death only but ecclesiastics were exempted from all punishment Mc N. 2 - 2 Hale 375 - K 375 And a allowance of Clergy for any one particular Felony exempted him from punishment for all prior Felonies 4 Bl 374 Mc N. 2 But in St. Ed. y benefit of Clergy was taken away from many Felonies in which it had allowed & the rule now in Eng. is y Clergy is allowed in all Felonies where it has not been expressly taken away by act of Parliament 4 Bl 373 2 Hale 330

In Conn y doctrine of Clergy is wholly unknown

Particular Crimes

I. Homicide

Homicide is merely killing one human being. Hawk. 60 & K. 77. There are three kinds of homicide justifiable, excusable & felonious & K. 77. 1 Hawk. 64. Justifiable homicide applies to cases where executed homicide implies a small degree of fault & is a small offence. Felonious homicide is a capital crime & is either Murder or Manslaughter & K. 77. 88. Foster 283. Hawk. 85, 6. 1 530.

1. Justifiable. Homicide is justifiable in L. when occasioned by necessity as of a Jud. acting under proper authority executing a criminal. Hawk. 85 & 86. 79. But to entitle a Jud. to a defence L. must require it. The done is commanded & required to do it, or in his discretion & K. 79. Russ. 49. 501. 1 Hawk. 100. For any more volunteer does not act under sanction of L. There is no legal necessity on his part & he is not justifiable.

And in such case the officer executing a sentence must pursue it in all respects or he will be guilty of Murder. He must do it at a time place & manner directed in a sentence. If he does not he does so without direction of law. Unlawfully mode of ex. as to cause death in a cruel way or. will be executed made him guilty of murder as if he had poisoned or drowned a prisoner.

Where to justify a person executing a sentence it must have been pronounced by a court having competent jurisdiction &c. See Hawk. P.C. Lib. 1 Chap. 1 for a charge of murder a sentence upon to death & judges & bailiffs executing a sentence guilty of wilful murder & 1 Hale P.C. 501 & Hawk. P.C. Lib. 1 Chap. 28

But when sentence is pronounced by competent jurisdiction & upon conviction of an offence, & the officer is required in executing a sentence to be law, an offence does not necessarily result of death &c. He is entitled for a mere misdemeanor before a competent jurisdiction & sentenced to death & the officer in executing a sentence is not guilty of murder or of any wrong. See Foster's Crown Law 308 3 Bac. Ab. 574

Homicide is justifiable in certain cases when it does not amount to murder; and an officer is resisted in attempting to make a lawful arrest in civil or criminal cases he may overcome resistance by force even to the death. So when a peace officer in attempting to disperse rioters is resisted he may kill. These cases seem to be a permission and a command. 1 Hale P.C. 494 & 495 Hawk. P.C. Lib. 1 Chap. 28 & 29 & 4 Bl. Com. 179. If a person charged with a felony resists or flies from his captors he may be killed by the officer, if he cannot otherwise take him for it is a delicate of error person & arrest him. 1 Hale P.C. 489 even if there is no warrant

If is an innocent person suspected of felony resists a warrant to take him 1 Hawk. 65 If a private person without authority attempts to take an innocent person on suspicion & loses his life in doing so he is not justified Foster 308 2 Mc. N. 572

An order mad. for the arrest of a person not a prisoner & he cannot therefore secure to escape It is never a rescue to make the arrest. rescuers of a prisoner if he dies in his own rescue 1 Hawk 60 Foster 203-4 2 Mc. N. 533 but if a prisoner is rescued in ot. case

Homicide is also justifiable when made necessary to prevent or counteract any forcible or atrocious crime as murder or burglary But a person is not justified in taking a life to prevent a crime not forcible 4 Bl. 180. 1 Hawk. 108 Cadeny 137 Foster 271-5 2 Mc. N. 532 Nor homicide is not justifiable in defence of one's prop.; nor to prevent a trespass on one's person To whom it is lawful to resist & prevent violence & even endanger a life if any person injure or expose him to great bodily harm & killing a trespasser is justified Foster 273 Cro. C. 538 4 Bl 70. 1 Hawk. 84

Now this case cited another for a mere invasion of prop. & offence is in con. manslaughter & not murder It is not justified but if an officer should break & enter doors or windows in arrest process & any arrest the life then offence will be manslaughter & if any one so strong 1 Hawk 108 4 Bl. 84

And it is a gen. principle or rule of law that a crime attempted with force when crime is actual force may be repelled with a mortal blow

If husband man in defence of his wife life or honor & to a justified in a same sense & wife would be justified in self defence. So gen. relation of parent & child. And a woman may kill another in defence of her chastity. And any third person may do so likewise when a offence committed is forcible & capital. He is justified by permission of law. Rock. 108-9. 10 Foster 274 4 BC 181 Keeney 137 2 Mass R. 562

According to diverse opinions of justification of homicide must be specially pleaded. Lastly a rule is that must be given in evidence upon issue of not guilty. Fost 255. It is a gen. rule of pleading that what comment to gen. issue can't be specially pleaded. 1 Chitty 487 3 Bac. 375. 9 Co. justifiable homicide occurs no punishment follows 4 BC 182

2 Excusable Homicide. The diff. between & justifiable homicide is that former is done in a better mind. Excusable Homicide is of two kinds. First. Homicide by misfortune or misadventure. Second. Homicide in self defence or defendendo, viz. & to prevent death. When it is to prevent death it is justifiable. Foster. 111 4 BC 181. When to prevent great injury it is excusable

homicide of a first kind is murder, however a
the second kind is committed when a man
is excited from a consciousness of wrong. 1 Hale
471 3 Bac 776 Homicide by misadventure
happens when a person intending to do a lawful
act & with no design to commit any wrong unwarily
kills another. Not a carelessness or wrongful
intention for done is essential to accidentalness
1 Hav. 11 Foster 258. 4 4 Bl. 182. 3 Russell 401
If a third person throws a stick or a horse or anothr. coach
or runs against & causes him to run upon another
person & kill him, a act of trifling wrong was on a
lawful act & does not excuse him. The person riding
a horse is quieta it is said of homicide by misadventure &
but I. F. does not see how — For a
rider is supposed to have no command of a
horse at all

If a servant in moderately chastising a child
should accidentally kill it is guilty of homicide
by misadventure. 1 Hale 1 Mass. 1 Bl. 182
1 Hav. 11 Fost. 262 2 Mass. 555. 7 Russell 54 Mov. 28.
If an officer inflicting corporal punishment on a
criminal or order of Court & intending to do it in a proper
manner should accidentally kill him he is excused.
But if a punishment is administered in an
improper manner or with an improper instrument
1 Hav. 11 Russell 57. 5. 183 Fost. 262 2 Mass. 555. 7

If death accidentally ensues in consequence of an unlawful act wh. is malum in se y offender is guilty of manslaughter at least & not y. can. may be a murder but to subject him under y such y unlawful act must have been malum in se, not merely malum prohibitum 2 Ms R. 158

Rule if y act of a man was merely homicide y killing is merely homicide if y unlawful act was an intended felony y killing is murder 1 Hav 112. 13 Hob 134 4 Bl. 185 92.3 Stos 258; 92 1 Hal. 475 Kar. 257 If one person accidentally kills another in y execution of a malicious purpose with intent to injure him he is guilty of murder & generally if y act is of a kind wh. in its consequences tends to bloodshed, y killing wh. happens accidentally is murder Hal 117 1 Hav 112 4 Bl 198 Hal 113.114 This is any principal wt he who makes an unlawful attack upon y personal security of another maliciously & death ensue, is guilty of murder

Again if one doing an illegal act wh. must endanger y life of some person if death ensues it is manslaughter The want of malice makes it manslaughter only 1 Hav 112 Str 481 Fost 261 4 Bl. 83

But if death accidentally happen in consequence of any lawful act it is excusable homicide Fost 215 1 Hav 112 1 Ric R. 254 Homicide is excusable in self defence If one should take y life of a person in consequence of an unlawful attempt of y person to kill him it would be justifiable homicide 3 Bac 377 4 Bl 183

According to some opinions when two persons are engaged in a sudden affray if one takes the life of the other he is excusable whether the other was the aggressor or not. This rule is clearly not L.

To excuse the species of homicide it must appear that there was any possible or at least probable means of preserving himself from death or great bodily harm. For it is not to be understood that an assailant may be killed by an assault 4 Bl 184.5 Hawk 105.113 Foster 273 Rex. 128 2 McN 553

When homicide is committed to preserve one's life by an aggressor it is excusable. Rule is that persons are starting for a master when a mortal blow is given homicide is manslaughter. This supposes that party slain is an aggressor and both are equally faulty. If one of them endeavors to decline any contest and not begin any contention but kills his opponent to preserve himself from death or great bodily harm the homicide is excusable 4 Bl 183,4 Foster 277

According to some opinions aggressor when pressed endeavoring to escape may kill himself rather than to preserve his own life. Not Law. For a death of another is occasioned by reason unauthorized act in defending 3 Rac 577 "Minor" Law 113 Hale 58 Sl 4 Bl 185 Foster 270-8 205

If one person raising struck another with malice prepense & then flies from a other who pursues & seeks him & is pursued to save his own life kills a pursuer it is murder Kel 58. 128.9 Hale 1. 113 But if both parties agree before hand to fight & one of them finding himself hard pressed or endangered kills a other he is guilty of murder This rule holds of duels Kel 129-31 4 Bl 185 1 Hale 112. 22. 4 But where a agreement to fight by fight itself is continuous a different rule obtains: the homicide would be manslaughter 1 Hale. 112. 22.5.5 Kel 117, Hale P.C. 39. 475 The second of a slayer is also guilty of murder 1 Hale 124 4 Bl 199 3 Bac 677 1 Hale 443

The excuse of self defence for killing extends to all a civil & natural relations i.e. the husb. for instance may justify a killing for an assault on his wife as the it had been committed on himself 4 Bl 184 3 Bac 688, 675 Kel 137, 9 So of Parent & Child But any Stranger may excuse homicide to prevent any capital or for civil crime Kel 61 Hale. 125

A person killing an officer who attempts to arrest him officially is not excusable even tho a officers warrant was irregular or illegal for it may be either without it appearing on the face of a second warrant Hence a person killing a officer is guilty of Murder 2 Mc N. 488. 9. 597 7 E. R. 455

He one can excuse a killing or another by pleading specially that it was in self defence but must prove it under a gen. issue by showing it in evidence. A special plea of self defence would amount to a Gen. Issue & is never allowed. Harris, 15 Co. 2. 283 Hale 478

As to Punishment of homicide it is said it was anciently punished with death. Mod. do 4 Bl. 188 Hav. 14 Tot 282 & 2 Pl. Punishment seems to have anciently been a forfeiture of chattels, not of real prop. Hav 15 4 Bl 188 As to punishment vide Stat 28-3.842 Hav. 598.9 1 Hill 115 Hal. 58 4 Bl. 188

3 Felonious Homicide is a killing a human being without justification or excuse Hav 402 4 Bl. 189 Homicide or killing one person is such if he dies within one year & a day after, tho it be not de se, tho it one who deliberately puts an end to his own life or does any act recklessly or maliciously w.h causes his own death as in case in shooting at another person maliciously; is guilty of murder in a year & day 1 Hale 418

If one persuades another to kill himself & he does it the former is not a felo de se but the latter is guilty of murder 1 Hav. 103 But a person who is felo de se must like all other persons be amenable, of course, to divine for what he chooses a rational agent 4 Bl 189.90 Hav 102 Hale P.C. 2 The offence of suicide admits of accessories before & not after only 4 Bl. 189 to punishment vide 4 Bl 189 Hav. 103 Hut Dougl. 534 Foo 243.50 52.323 The ignominious burial, impaling &c was taken away by St Geo 4. 1823

The second kind of felonious Homicide is a killing another person & yet may be either with or without malice aforethought or malice prepense so there are two kinds of felonious homicide, Manslaughter & Murder & difference consists in its being committed with or without malice aforethought 1 Hav. 115 Hale 466 4 Bl 190 Malice as used in yt case & all other cases in L signifies any unlawful or wicked motive whatever; any evil design or malice Fost. 255 4 Bl. 198. 9

First Manslaughter, is y unlawful killing another person without any malice express or implied Hence on an Indictment for manslaughter y prisoner is charged not with having killed a person with malice aforethought but "of a sudden & in his mind" 4 Bl 191 1 Hale 466

It is either voluntary or involuntary In manslaughter there can be no accessories before y fact, for there is no premeditation But there may be after y fact 1 Hav 115

1 Voluntary Manslaughter If two persons fight together on a sudden quarrel & one kills y other y homicide is manslaughter so if they agree to fight & immediately carry y agreement into execution & one is killed 4 Bl 191 Fost. 297 Kel 115, 134, 5 1 Mc Na 563, 8 This case differs essentially from a duel fought by previous agreement in wh. case there is time for reflection the killing then is with malice aforethought & is therefore murder 1 Hav. 112. 22, 4 Kel 50. 131

If a person of ordinary sense knows others are present or within earshot & killing one of them, there is murder provided a party slain was to see, or had notice of, the intention of a party slain was to see, or had notice of his object was to separate & part a fighting assailant, & object of direct or a hard beating it is only manslaughter Fost 372, 310 Geo. 510 2 Mc.N. 507 1 Hale 127, 8 Rec. 55, 7, 114, 5

If one person greatly provoked by another immediately kills another by striking his nose immediately kills another by striking is manslaughter i.e. when by striking & assault are continuous acts. But if sufficient time elapses for a passion to subside between an insult & killing; a killing would be murder Rec 133, 0 27, 50 1 Hale 117 n. 25 Fost 295, 294, 310 2 Mc.N 507 Rec 212 But even on a sudden provocation if a party kill a insulter instantaneously in such a manner as manifests an intent to kill or do great bodily harm & death ensues it is murder R. throwing a boy to a horse's tail Eng. 2 131 1 Hale 120 Rec 127 Fost 292 Mc.N. 504, 5 4 Bz 190

But in speaking of provocation it is necessary to distinguish between words or provocation & acts of indignity &c. are so, like person striking another face, will shake rage & strike immediately offence is manslaughter differ of mere words without action; or a mere breach of promise: or a mere trespass on lands 1 Hale 124 Rec 130, 1, 5 Eng. 2 79 Rec 7 Fost 290, 3, 5, 504.

However on prosecution given on mere words it appears from a manner of beating, of a party only intended to chastise without any intention of killing, a killing would be manslaughter 1 Hale 455 Foster 124.5 Foster 291.5 4 Bl. 200 2 Mc N. 564 But when any fray between A & B a friend of A interposes suddenly & kills B wth a friend of B is guilty of manslaughter tho' Pen. Rule for a interposition is supposed to be sudden without malice prepense Foster 315 R & G 97 Keel 61 198 However in cases of this kind particular circumstances might alter the case

Manslaughter or human occision, differs from homicide in self defence. In a latter case there is an apparent necessity in a killing for one's own preservation. In manslaughter there is no supposed necessity 4 Bl. 192. 84

As to involuntary manslaughter; this term imports is always unintentional, but ensuing upon some unlawful act "malum in se" 4 Bl. 192 1 Hawk 111.112 Foster 258 2 Mc N. 533 Foster 207 It differs from homicide by misadventure in this: The latter ensues when a lawful act 4 Bl. 182 Com. 830 If death ensue upon an act lawful in itself "malum in se prohibitum" the rule is the same as in a act more lawful i.e. a homicide is by misadventure in the act of shooting Foster 257 1 Hale 475 2 Mc N. 573.4 If one accidentally kills another when engaged in some rash, idle, or dangerous act it is manslaughter These are unlawful acts 4 Bl. 83, 182 Schultz 55 1 Hawk. 25

If an act in itself lawful is done in an unlawful manner or done under circumstances the act is unlawful see 20.442 & 21.02 1 Hale 11 Hawk 481 1 Hale 472 5 St 253. 202 2 Mo. 557. & 8 Q. unless act is trespass, as a killing in manslaughter if done act is merely 4 St 472 &c

II. Necessarily seen – exod, not liable in civil in a civil in service that offender lawful & all his goods & chattels is burned in a house – neither not forfeit his land because not convicted

In cont. it is renewed in 1st year 2 Ed.) with forfeiture of goods & chattels to state & liberty, standing & disability to give verdict or evid. It intol. not within our St. What is C. L. was involuntary manslaughter is in Eng, but a misdemeanor, decided in N.L. Oct. 1800 Vt 15 Rogers) but voluntary manslaughter still be punished as at C. L.

of Murder

The name was anciently given to a secret murder done by 2 or 3 a person or persons not known were amerced 4 Bl 194 1 Hale 117 Cit 121. 4 3 Bac 551 Murder is now described thus Where person of sound mind & discretion unlawfully kills any reasonable creature in being & under peace with malice aforethought express or implied It is unlawfully killing of man with malice prepense Hale 118 Inst. 47 4 Bl 195

The difference between murder & voluntary manslaughter is, y^t ye latter proceeds from sudden passion, ye former from wickedness & malice 4 Bl 190 "Of sound memory" &c So must every offender be to be punishable 4 Bl 20.25 "Unlawfully kills another" Unlawfulness arises from killing without warrant or excuse It must be actual killing assault with intent to kill is a misdemeanor only tho formerly murder 1 Hale 425.6 4 Bl 196 3 Bac 564

Not only death wrongfully taken away but any act or omission whereby a mortal injury is done, without intention that 1st any act or omission consequence is death 2d. eventually occasions death 2 if intentional & premeditate, is Murder Ex. poisoning, starving &c 4 Bl 195 1 Hale 118 3 Bac 572 Palm 542 Stra 834 Leach 141 For Ex^s see 1 Hale 431.2. 450, 617 1 Hawk 118.114 4 Bl 197 Palm. 545 Leach 141 3 Bac 573 Str. 850. 883 L. Raym 1578 Palm. 431 4 Bl 47.

2nd So in some cases where ye actual murderer is an innocent agent. So one incites a mad man to kill another, or causes poison to be given & takes it Hale 118 Foster 366 & 81 in the duress of imprisonment commits another & accuses an innocent person who is condemned & dies upon evidence 1 Hale 3.115 3 Inst 91 1 Hale 431.5.42.57 3 Bac 573 Foster 194 Kel 53 Where a person takes a person with intent to take away one's life, is such a killing is a murder & murder at C. L. provided ye innocent person is condemned & executed Queen Leach 441 Foster 32 If person innocent C. L. 4 Bl 195 Foster 31 East 194 3 Inst 48 J. G. Marks it is not murder since Mass C. Rep. Jan. 817 It is by Const. St. punished with death 1824 -- Now 1830 by Imprisonment for life

A Physician who gives a potion which kills it is homicide by misadventure only – But it has been doubted if the person be not a regular Physician he it is at least manslaughter Bid. Lu. 4 Bl 97 2 Inst. 251 1 Hale 430 3 Bac 54 1 Hav 131

But no person can be indicted for killing another in 1. unless death happen within a year & day, in computing the whole day on which was the wound given 1 Bl 114 3 Bac 50 But if he lives beyond that time it is no excuse for a other yet he might have recovered if he had not been neglected 1 Hav 119 3 Inst 53 Kel. 25 1 Leo. 17 1 Hale 428 But if a wound or hurt be not mortal the party is killed by remedies used & not by a wound he it is not homicide but the fact must appear clearly 3 Bac 038 Hale 428

A person indicted for one species of killing cannot be convicted for any of a totally diff. species ex. Poisoning for Shooting &c. Secus where they differ only in circumstance Ex. Wound given with an axe, sword, &c. but it could have been given with a sword 1 Bl 193 3 Inst 319 2 Hal 185 1 Mo. 11 520. 22. 2 Ld 241 Oct. 17

Being present aiding & assisting, yet or abettors present aiding & assisting, yet aiding & abetting will maintain an indictment 1 Hale 437 2 Ld 132 Leo 87. 112 4 Co 42. a 1 Roll 68 2 Mo. 11 272. 5. 339 For both are guilty as principals

The indictment must state that the person was deceased a mortal wound or bruise (Hawk 98.) i.e. I suppose where by means employed were violent tends to bringing the person to a conclusion

"A reasonable creature, in being under the peace" Means subjects are either under peace: killing any person whatever except an alien enemy in time of war may be murder 4 BC 197.8 8 Jas 1 50 1 Hale 433 3 Inst 55 1 Hawk 21 All others are "under the peace"

Killing a child in ventre sa mere is a great misprision only – not in strictness murder for the purpose 3 Inst 55 4 BC 198 1 Hawk 121 Misprision is a high offence under degree of capital but bordering upon it 4 BC 119 Kel 71 Hale 374 Hawk 86

But if the child be born alive & afterwards dies of the wound &c – in ventre sa mere" it is murder by the better opinion 4 BC 198 1 Hawk 111 3 Jas 1 50 1 Hale 431 contra. But a death must be within a year & a day 4 BC 197

Applied "reasonable" in the definition means human I suppose – not "rational & possessed of reason" – Madman – Idiots &c are within the definition – Infer &c the Madman & their insep. results of murder as mentioned 1 Hale 118 1 Hale 431. 436 Some would say the children in ventre sa mere, & in fact not is killed in pursuance to his accessory to murder 1 Hale 121 Cay. 87 Jas 51 Lee 127

By statute 1st & 2d Vict. cap. 85 [illegible] [illegible] [illegible]

2. where one kills by an act wh. indicates enmity to all mankind Ex. by throwing into a crowd 4 BC 199. 200 East 261 3 Bac 385 Distinction not well taken by Blackstone 4 Wol 199. 200 Express malice seems to me to be wh. is joined or concurs with an act in killing Implied, wh. so concurs only by implication of Law 1 Hawk 122 Ex. 1. Discharging a ball, with intent to kill or hurt A. S. or Person, however it may strike 2. Doing same act with intent to kill & steal an Ox.

So in a case of deliberate duelling it is express 1 Hawk 122 1 Russ 86, 7 Kel 124 No excuse if they hastily fought attacked first - or if he did not intend to kill but disarm - rash deliberate design is express malice 3 Phil 171 Hale 452. 3 4 BC 199 Kel 271 3 East 581 East 296, 7 2 McN. 568

So if seconds or pers. keeping are guilty of Murder, the express malice relating to some person or principle party Kel. 4 BC 194 1 Hawk 124 Freem 514 1 Hale 443. 451 Giving a challenge is at C. L. a high misdemeanor 3 East 581 Stat. if punishment is prescribed by St.

If a person upon no provocation or a mere one, suddenly attacks one, kills, it is murder by malice express Kel 27. 50 129. 127

To a cruel & precious an act in such a case is evi: of hardened & deliberate malignity towards deceased 1 Hal 124 Fost 255 Ke. calls it implied malice 4 Bl 200 It seems to J. F. to be express so generally if even on a sudden & great provocation one beats other in a cruel & unusual manner & kills him it is murder express malice 4 Bl 190 Ex. in Ch Pro Fred v Forster's case 1 Hale 454 473.4 Kel 127 1 Hav 126 Cr. E. 131 Palm 545

So if on a sudden quarrel he the killer shoots & have been master of his passion at a time: it is murder by malice express 1 Hav 123 Kel 50 If one commencing treading on a peace as by fighting he suddenly draws a pistol & shoots the adversary to murder it: he is guilty of murder 1 Hav 127 Kel 55 2 Mc. N. 509 Ste 573 3 Inst 52 4 Bl 40 9 Co. 58 Fost 308. 310

So if a private person acting in aid of a officer; or in his assistance or present Kel 55. 114 But the object of interference must be made known except in a cu. or an officer known to be such acting within his district seems only manslaughter 1 Hav 127 Fost 135. 311

2. Malice is implied when a killing is in consequence of an unlawful act, intended as to another or indirectly, for some other purpose, than of taking a person slain 1 Hav. 112. 125 4 Bl 200. 1 ex. One shoots at a fowl with intent to kill & kills a person unintentionally; or shoots at a wild b; & kills a person or poisons a dog Francis 4 Bl 200. 1 Hav 126 Kel 111. 117 1 Hale 475. 474 Mo 87 Dal 31. 3 Dav 97

But y intention not must be a felon: heavy killing is regularly manslaughter 3 Bac 975.7 1 Hav. 112. 13. 125.8 Ken 111, 117 4 BC. 188. 192.3
Plus. gave his b. a poisoned apple. to give her — she gave it to her child, & killed it — not treason — implied malice. Hav. 120 Rev 473 3 Inst 51 9 Co. 81 Dean 555 Hale 435. 441. 457 2 Mc N. 554.5 Fost 251 Kel 111 L. Ray. 0581

But when one kills in consequence of such act as indicates a mind to murder, tho not to the deceased in particular; it is express ex. malice to shooting into a crowd of people & killing one 4 BC. 199. 200 2 Mc N. 554. & 2. 148 1 Hale 118 1 Hale 475 3 Inst 57 Fost 257.2 Here intent concurs with an act of killing — an intent being to kill one person when a bad mind strike

If one kills an officer in a struggle to escape from a lawful arrest, it is murder by malice implied. Design was principally to escape not to injure a officer 1 Hav 129.4 Steb 485. 130. Hale 403 Fost 20. 95. 308 So tho a officer did not inform for what cause he was lawful to arrest — So tho a officer (if he was a private one) did not show his warrant before hand Hav 129. 130 Dec 57.8 Fost 137. 311. 12. 8 Ere 9. 280 485 2 Mc N. 57.

All homicide is presumed to be malicious unless proven is on y accused 4 BC 201. 9 Co 57. 8 Fost 255. 1 Hav. 124 Ken 27. 112 2 Mc N. 585

Wherever the homicide is murder, or else unless 1st justified by command or permission of law 2nd caused by accident or misfortune or 3rd caused by some extraordinary or consequential act, not amounting to felony or occasioned by some sudden & violent provocation 4 Bl. 201

If death be caused in a manner so unusual or unlikely that a man would not foresee it, or execution of an illegal act upon a third person, he is guilty of murder. Secus, if a killing is not in execution of a common design & others do not aid or consent to it. Here a single only is guilty. 1 Bl. Com. 131

<u>Punishment</u> of murder is death, & original at common law — & all accessories & principals are punished 4 Bl. 201 1 Hale 450 Coke 3 Inst. 43 & 23 Hen. 8 Cap. 1 & 1 & 2 P. & M. Clergy is taken away from murderers, & abettors no accessories & counsellors 4 Bl. 201 2 Hawk. 484. 6. 331 3 Inst. 55 2 Hale 299 These St. seem not to extend to accessories after the fact. In Eng. it is doubtful whether the benefit of clergy be taken away in this case. 2 Hawk. 331, 2 Hale 299 3 Inst. 51. 211 4 Bl. 203

If woman convicted before sentence given of child execution is respited, till her delivery — But it is no excuse for not pleading, or for judgment being arrested 2 Hawk. 338 2 Hale 413. 4 Bl 395 But respite for other cause can be had but once 2 Hawk. 338 Fitzh 478 3 Inst 17

Execution is not complete till a court is held, or required to meet & require manner. Former rancor time no execution 4 Bl 405 2 East 412 2 Hawk 458 Finch 457

2 H. P. If on an inquisition of lunacy, a verdict is arrest him, a prisoner is not bound to stand up & declared was an officer, otherwise on a person of the actual as such 4 St. 1. 55 2 Mc 1. 485 2 Lu. Man not a prisoner more by declared was not an officer: I test to may: The rule relates only to proof necessary to be adduced, by a prosecutor

Petit. Treason

There are certain instances in L. murder being more atrocious than others is denominated Pet. Treason — It is indeed no more a murder in its most atrocious form & degree 4 Bl 202.4 East 107 324. 330 it C.L. name of crimes were called pet. treason, & are not now in a direct line of Franchises discovering, kings council: his attempting to kill her husband 2 Hawk 131 Stat 20.1 Hale 37 382 5 Bac 140

Vide 11 25 C.B. respecting pet. treason excl. in following. 1st where a servt kills his master 2d a w. or M. 3d he Eng. Ecclesiastic has power to burn 4 Bl 203 1 Hawk 131 2 Mc. R. 5-4.5 Called treason by reason of y violation of private allegiance — in addition to murder 4 Bl. 203 East 107. 324. 330

Husband & wife not P.T. Treason unless under such circumstances, as wife make a killing of another person, murder 5 Bac 141 1 Hav 132 Cy 254 1 Hale 378 380 As P.T. Treason includes murder 2 Inc 1 074.5

If a W. divorced a mensa & kills her hus. traitress - husband, & a wife 4 Bl 203 1 Hale 380. 1 Hav 133 n 5 Bac 141

If a W. procure a stranger to murder her hus., being herself absent, at y time she is accessory to murder only - But if a stranger procure y wife to do it he is accessory to petit Treason 5 Bac 142 3 Inst 20 139 1 Hale 24.5 1 Hav 132 Cu. 28.332 For y nature of a accessory's guilt follows y^t of y principal

Murder of one's mistress or Master's wife - Petit Treason to not within a letter of 25 E 3 5 Bac 142 3 Inst 20 Flet 86 1 Hav 132 - One of the few instances in which Penal Statutes have been extended by construction beyond the letter.

So murder of one who has been master, or servant, or received during a service is P.T. Treason because in execution of a Treasonable intention Hav 132 Flet 250 Co 99 5 Bac 42 4 Bl 211 Murder of a Father or a Prince not held Treason unless y latter is by reasonable construction a ~~Father by~~ Servt to a Father 1 Hav 132 3 Inst 20 Hale 380 Originally Clergable - Taken away 12 Hen 7. From writers, actors & Counsellors by 23 E. 3. 4 H. & M. & Lords Praeu & from accessories after fact 4 Bl 204 5 Bac 141 1 Hav 133 Punishment, in a male a traitor to be drawn to place & hanged - Female to be drawn & burnt 4 Bl 204 Hale 382 2 Hob 309 3 Inst 211 1 Hav. 133 2 Ins 531 On an Indictment for petit Treason y wife may be convicted of Murder Hale. 390

Arson

Arson is a malicious, wilful burning of a house or out house of another 4 Bl 220 1 East 55 3 East 33 2 W 1888 Leach 2.8 Burning a warehouse but without house or dwelling, is not arson, it is not mentioned or domestic as barns, stables &c must be used for arson 4 Bl 221 So a barn filled with corn is within a definition but not necessary 4 Bl 221 Burning a frame of a house is not arson because not within meaning of dwelling 1 Hav. 93 1 East 53 3 East 97 Burning a prison is arson; being a house of incorporation 2 Rh. Ans 1 Leach 1.8

Arson may be committed by burning one's own house if it is in a dwelling house is burnt in consequence of it — But here a house consists in being used & lived 4 Bl 221 For if one seized in fee or possessed for years only of a house burning it & a stranger from without burns it; — not arson 1 Hav 195 Cro C. 87 Jones 351 Post. 110 Leach 217-19.

And if one so seized or possessed of house burns it arson with intent to defraud other creditors or wilfully burns his own house — not arson 4 Bl 221 So if he from year to year* But if wilful burning of house is not arson, it is a high misdemeanor; inflicting fine, imprisonment & security for over the good behaviour 4 Bl 22. The indictment shd not be for arson but for 24 Leach 219. 235.; but for the misdemeanor.

A landlord or reversioner burns down house while in possession of his Tent it is arson
It is no term. a Tent's house 4 Bl 221 Arson or Burgl.
is substantially the same as at C. L. Vide Comt St
182. 1855. 5. It extends however to more subjects. & need not be of a dwelling

Burning Wilful? Neither a mere intent nor an actual attempt, to commit a felony is within it nor must be burnt But actual burning of some part is; tho' it be extinguished or do out itself. 1 Hale 469
4 Bl 223 Burning must be malicious Secus only a Trespass — burning thro negligence or accident not Arson 4 Bl 221 Yet if one intending maliciously a burning house accidentally burns Bus; it is Arson — for a felonious intent 1 Hale 17

It is a C. L. felony punishable with death —
Burnt to death in a Prison ok Ca 1. 4 Bl 221. 2 not Clergyable* 4 Co 74. See 4 Bl. 222. 3. 1 Hale 481. 503
Clergy denied also to accessories before & after by 4 & 5 P. & M. 4 Bl 222. 3

For by Comt. L. of arson as at defers from by C. L. See 5 Is. of Comt.

* But it seems to have been entitled to clergy by Stat 25 Edw III. but was ousted of it first by that of 21st Hen 8th which being repealed by Stat 1st Edw 6th was ousted again by the Stats 4th & 5th Philip & Mary

Burglary

It is a act of breaking & entering into the mansion house of another, in the night season, with intent to commit a felony. 4 Bl 224 1 Bac 335 1 Hale 549

Dwelling House: seems not absolutely necessary, the breaking should be in a mansion-house; house of a town, or a Chamber &c. 4 Bl 224 1 Hale 552 2 Ld. Raym. 1088

The instances are more mansion seems indispensable in a indictment. Every building is the mansion house seems not so into 1 Hale 552 1 Bac 335 The term "mansion house" includes all out-buildings which are parcel of a mansion, curtilage & [illegible] protected & mentioned to a Cottage house 4 Bl 225 1 Hale 553 1 Bac 335 Rex. 42.32 [illegible] 55 [illegible] 27.11.42.

The Curtilage seems to be a portion of ground which is enclosed with a house by one common fence, or connected with it or adjacent to a fence. Burton on out-house: Sect. distant is related to another possession & not within or connected by any fence enclosing both adjacent not within a curtilage 1 Hale 163 n Leach. 145 1 Hale 558 & 1788

A room, or lodging in a private house, the owner does not lodge in it - or if he enters by a different outer-door it is a mansion-house of a lodger

Lewis, if a man comes in it. enters, by some extraordinary — here there is not one mansion-house out of a city 4 Bl 225 1 Hale 551 Cro J. 1 2 Lac. 532 Ree 93.4 Raw. 93.4 Com. Dig Leac 90. 230. 350. 278

An uninvited house can't be a subject of burglary. If a. house thus is within his curtilage & with it & B. to work in, & he never comes in it. burglary can't be committed in it. It is not less a mansion house tho' seized on by force; nor his for he never comes in it 4 Bl 22. 25 - 226 Lewis if a lizer lodges in it or if it were not thereby a house 1 Hav. 174 [illegible]

A house in wh. sometimes one resides, tho' let for a short season anime revertendi - is a mansion-house tho' no one is in it at a time 4 Bl 225 1 Hale 558 Cro 77 1 Hav 162 Mo 830 Ree 92. b. 7. 46 Ale 40 Cro 40

So a house wh. one has hired to reside in & dist. part of it serves into, tho' not lodged in Ree 46 Cro 77 Hav 174 Hav 172 The house of a Corporation is within curtilage. com. one of its officers living in it. Mansion-house of a Corporation 4 Bl 225 Leach. 67 Cro 98 1 Bac 335 Not committed in a Tent, or booth - temporary - it is a tabernacle 1 Bac. 335 4 Bl 226 1 Hav 164

Felonious in Court of a cabin in a vessel containing goods, may be a subject of larceny. Roe 83 Russ. Mirror! vide Court. St. of Burglary.

It is essential that a name of a owner or occupier of a house be inserted in an indictment. Foster 243

"A Night-Season" Formerly it might be committed, at the time between sunset & sunrise 4 BC 224. Bac 314. But now a Jury may include one time between evening & morning. Twilight 4 BC 224. Hale 550. 1 Ms 93. Cannot be committed during "Twilight"

It is said if there is so much daylight or twilight, that one's countenance can be clearly discerned; "not a night season" within definition. But it must be daylight or twilight not moonlight 4 BC 224. Hart 80. 2 East P.C. 509. Hale 524. 2 Mc. N. 500.1

Using Violence; to break open a door is necessary — need not be at same time. Breaking in the night & entering: must be sufficient 4 BC 226. Hale 551. Foster 78. Foster 342. Breaking open a door, but by breaking, or turning out a pane of glass, picking a lock, opening it with a key — lifting a latch or loosening any fastenings 2 Mc. N. 500.1. 4 BC 225. Hawk 150. Hale 504. 527, 551. 2

So coming down chimney; for it is as much closed as y nature of y thing will admit. Breaking a window in y house is burglary as well as [illegible] definition [illegible] 408.9 Kel. 31 / Hale 527 1 Mc N. 605. Entering by an open door; but breaking within is execution. Thus if having entered, he breaks open an inner door of a room it suff. 4 Bl. 226 / Hale 553 / Hawk. 160 Kel. 67 1 Mc N. 101.2 Whether it is breaking house-breaking if [illegible] is not

Where the servant of a party having entered with intent without breaking; or being in the owner's permission, it is a breaking within y definition at C. L., [illegible] contra [illegible] 4 Bl. 227 / Hale 553 By St. 12 Ann. declared to be so. Bac. 333 4 Bl. 227 / Hawk. 161 [illegible] with intent. So if being in a house, at night, without a previous intent, he commits a felony, & breaks out. [illegible] in both cases it is no without breaking Hawk. 150

Obtaining entrance by fraud with intent to [illegible] is burglarious [illegible] [illegible] [illegible] in order [illegible] [illegible] [illegible] — or procuring an officer to enter under pretence of searching for thieves, & then there is a breaking & [illegible] occasioned at such [illegible] not [illegible] to be broken. 4 Bl. 226 / Hawk. 11 [illegible] 2.44.53.82 / Hale 552 3 Inst. 64 / Bac. 333

If a servant opens his master's chamber door with intent; or a lodger in a private house or inn open & enter an'r door with intent, it is a burglarious breaking & entry of y mansion house of y owner or occupier 4 Bl. 227 Kel. 67 1 Mc N. 101

Law sent in a house consisting of two rooms, & was seen in the night, at the house door; held accurate on Burglary 4 Bl 227 - 1 East 453 1 Hale 552 2 Mc N 504

"entry". The last entry with, wholly or part, of body — or thing in an instrument or weapon; as a pistol hooked - unhanging a gate - but a mere entry 4 Bl 227 1 East 453.5 Dalt 105 - Hale 551 2 Bac 57 1 Bac 334 2 Mc N 503

But sent. of instrument must be in bodily fear purpose of committing Felony or Breaking Old Bailey 1785 That taking a note from a door so of there were iron bars outside and not a complete entry - not being introduced & take not Le 1 Hale 552 n Leach 342 Also there also was not of turning a key of a door locked on the inside 1 Hale 552 1 Bac 334 Leach 342

On an indictment for breaking & taking they may be acquitted of the breaking & convicted of stealing Leach 891 If several join to commit a felony some of them stand at a distance & receive the others break he; - are all guilty of breaking &c 1 Bac 334 1 East 80.1 - 430 355 1 Hale 552 Foster 350 353 Kel 111 2 Mc N 504

"With intent" To constitute Burglary there must be a felonious intent - Breaking &c are a mere trespass 4 Bl 227 1 East 154 Cowp 90 Kel 50; 267 7 Mod 582 1 Hale 154 1 Bac 336

Such an intended gift passes St. Tel. — Thornt C. L. Cr. Rep — Gift of St. Tel. has all property of a C. L. given 1 Hav. 454 4 Bac 228 15-481 1 Bac 335

The necessary ct. intent should be executed intent as one suff. Ch. intent & jurs are to judge 4 Bac 227.8 1 Hav 154 1 Hav 540 2 Hav 350 Post 107 1 Hav 133 n 1 Bac 335

Where one has been appointed under insolvent act by taking a horse &c, & paying money on it, he cannot be executed on a home bearing, & paying money on B. Petersen that he may be sec 30.32 2 Hav. 52 For a bearing bodily in no cases, legs are paying

Peculiarment — Burglary in Temy of C. L. but language Pen hanished with death; Clergy then taken away in St 1 Ed. 5 c 12 & 8 Eliz — also taken away from accessories & were equal by St. 3 & 4 Ann c 2 M. 4 Bac 228 1 Hav. 103 2 Hav 354 1 Bac 335

Decided in Commt. of Burglary being an offence at C. L. may be prosecuted as such by Stat. the clergy Peculiarment Lect 59 Lide Commt. St.

Larceny

(1) Larceny or Theft; 2 kinds: 1. simple 2. Mixed. Simple is a main term, unaccompanied with any aggravation. Mixed, or timorous, includes in it a aggravation or taking from owner, house or person 4 BL 224 1 Hav. 34

I. Simple Larceny is a felonious taking & carrying away, of a per. goods or chattels 4 BL 220 If goods are above value of twelve pence, it is Grand Larceny. If for 12 pence or under it, it is Petit Larceny 1 Hale 503.4 East 121 4 BL 229 2 Bac 475 1 Hav. 134 1 Str. 7

If goods over value of 12 pence are stolen at several; each is guilty of grand larceny. Hut 45 Taking under value of twelve pence, at several times, from a same person, not grand 1 Hut 145 2 C. B. 184 Lum. 285 Old Books Cont. Hut 581 2 Hut 710 Evidence of taken grand & petit is in value of goods. Hence if many taken at one time, nature of simple larceny in gen. which is both Grand & Petit 4 BL 229 1 Hav. 45 East 78 Differ essentially in punishment

"Taking" gen. law of every felony includes a trespass. Hence if a party is guilty of no trespass or taking; he cannot be convicted of felony in carrying away 2 McN. 580 2 Bu 472 Kel 81 1 Hut 134 Kel 24 4 BL 231 2 Lu. at 2 time? next ru.

The goods must therefore be taken from a poss^n of owner, either actual or constructive (Hale 35 b n (cf. T. R. 480 & 480 740 that a constructive poss^n is a part of present possession) Hence if one finds goods & converts them to his own use, not larceny no trespass — there is, yes sc, theft. So when the one possessed under a delivery to a owner, is not guilty of larceny, it is yet if afterwards embezzling from ex. to owner & to convert & to bailee, of cloth &c (Bac 472. 8 & 2 Ld 130 Ms 103 Hawk 134. 5 Hale 504

In case of carriers or other bailees &c for wrongful embezzlement. Here, when a delivery is for a certain special purpose, — owner retains a right to countermand delivery, Lev. 1. 141) & poss^n is in owner; & embezzling animo furandi, is a felonious taking (R^v v B. 1779, C. B. 1758 & C. B. 1779 &c) In these cases a previous intent to steal, seems not to be required But a constructive poss^n being in owner, taking &c with felonious intent is a felonious taking from owner (Hawk. 35. 5)

The same in other cases as not to trespass. So of goods delivered for safe custody C. B. 1779, Hawk. 135 n Kel 81. 2 Bac. 204. 207 Rex. Bragg cite & gen. Rule that &c. Leon 1. 241. 340 Cro 1 Mo 97. 188

If one obtains a money, with intent to steal, & carries away or embezzles; it is larceny. So by ancient rule ex. obtaining a bill of exchange under pretence of discounting, but with intent to steal, & then converting it Le 1 Hawk 135. n. 137 Leach 200. 213 Kel. 81. 2 1 Show 50. 57 Leach 355. 6. 95. 131. 201 1 Bac 478 3 Chs. 108 Hale 63 1 Sid 254 1 Mc. N. 584 n. in random legs of wh. he can take no advantage

Poss.n in L. remains in owner: [The fraudulent intent it is said extinguishes cont., or permission] Ergo owner retains poss.n in L. (Kel 81 1 Haw. 135 n) For by taker shows his orig.l intent to have been not to take on cont. but to steal Leach 2. 5. 3 Kel 81. 2 What need is there of considering cont. as extinguished, when there is otherwise a sufficient countermand; or constructive poss.n

Lewis, in pretence sure to buy Lemon. was sold & delivered Here both actual & constructive poss.n is parted with Leach 401. 05. 358 Unauthorised poss.n transferred by terms of cont. under in abuse ex.s of Bailment

No. obtaining goods from one, fair on the intent to steal, under a Replevin — or by virtue of an execution, on a judg.t obtained by fraud on by court Le is a felonious taking, for by Replevin & judg.t are void 1 Bac 473 3 Inst 108 Kel 43 Ray 475 1 Salk. 185.

Thus [illegible] commencing [illegible] [illegible] of the carrier having carried goods to place takes wth animo furandi: this taking is felonious: so he [illegible] felonious [illegible] ordinary; for the bailment is determined [illegible] he is a trespasser. Hawk. 135. 3 Inst. 107. Hale 505. 1 Bac. 473. Kel. 83. 4 4 Bl. 230. [illegible]

So if he takes them [illegible] at the destination & then embezzles them, animo furandi: same reason. Kel. 81. 2. 1 Hale 504. 5. So in the case of [illegible] 358 [illegible] if the carrier opens a bale of goods & takes away part; it is a felonious taking: because as some say he had no [illegible] in the contents [illegible]; but he had in the thing containing (1 Bac. 473). Bl. says because the animus furandi is manifest (4 Bl. 230). Hawk. says because [illegible] possⁿ [illegible] from the whole [illegible] (Hawk. 135. 2 M. R. 587). The true reason seems to be that the possⁿ [illegible] a time [illegible] Kel. 83. Leach 242. There is always a right to countermand [illegible]

If one sells a horse to another, & the latter on delivery immediately rides away with him without the vendor's consent; no larceny, whatever [illegible] intent might be [illegible] absolute possⁿ [illegible] vendee [illegible] vendor has parted with his right of possⁿ [illegible] it is merely a fraud [illegible]

[illegible] Bailee [illegible] intent to convert the property [illegible]; not [illegible] [illegible] to the possession or right of possession [illegible] from the owner, is rated with the Bailee [illegible] from the owner's right to control or manner of delivery, 7 S.R.9 2 Ne R 821 Leach 213. 357; 701 4 Ne 190. Larceny. Conversion by Bailee must be done fraudulent intent to steal. Leach 357 Jones, it is larceny.

III

The true nature of words or acts to make a bailee a long-term[illegible] [illegible] to the bailee is not [illegible] of a fraudulent intent [illegible] in these cases in the conversion [illegible] demand is [illegible]; [illegible] from [illegible] cases 4 Ne 240

IV. Where according to terms of Bailment Bailee has no right to countermand it, time of conversion of conversion cannot be [illegible] unless; a delivery was obtained with intent to steal. Entire hire for a mo. converted in a week Leach 357 2. Jones if bailee according to terms of the cont. had a right to countermand - continuing possn in a bailee; not in intent 3. If Bailment was obtained with intent to steal, it is always Larceny

V. The [illegible] rule if a bailment runs [illegible] with goods committed to possession; not a [illegible] [illegible] more than a [illegible] [illegible] 21 Hen. 8 It is [illegible] if a [illegible] of a railway 40 lb [illegible] in [illegible] to depot, under 18 4 Bl 230. 1 Hale 504 1 Bac 474 1 Bar 84. 135

In the instant case come within the [illegible] of a larceny? The watchmaker entrusted a watch to the prisoner with them to clean; he carries it off with the intent to steal? The question is, [illegible] E. L. has not E. undertaken a change in modern times? [illegible]

But at C. L. according to other opinions if a servant has not a possession; but merely a care keeping; [illegible] with or embezzlement is a felonious taking 4 Bl. 231 1 Hawk. 95. 1 Bac. 130 Mod 225 Cro. 44 2 a drunkard - waiter - possn in a master 2 East 85

Goods stolen, on their being thrown by the taker in a fit of drunkenness taking from a cart for by prop possn in L. are in him. 1 Hale 130. 7 Bac 473 Wh. R. 584 If one steals goods in a county all carries them into a county of B; he is guilty of a felonious taking both in C & B. & may be prosecuted in either county For every moment's continuance of the offence of taking, is a new taking. Lit 1 Hale 130. 7 Mod 89 2 Bac 473 receiver of any p taking in a foreign State 1 Hale 137 1 John. R. 477. 9 Conn. R. 2 R. in Conn. 1852 2 Mass 115

It is not Larceny to receive goods clandestinely from a wife like ones Leach 49 Because her taking is not felonious - She cannot commit as principal - nor no accessory

"Carrying away" The least removal from a place is a carrying away. To be a felony it must be attended by leading a person a certain place. It is sufficient if he be led a few yards. So driving a horse a few yards. So taking out of a house & leading a few yards. 1 Hale 508 Rex v. Hall 4 Bac. Abr. 2 M. & R. 502 n.

Cutting a piece of wood, on its end, not a carrying away — not removal from a place. Rex v. G. Cut removing from one end to a tree of a wooden post, Kitchin Leach 236 A.D. 1784 Cf. of diamond cutting (in Leach 237) [illegible]

"Feloniously" The taking & carrying away must have been feloniously, i.e. animo furandi. Hence those wanting understanding are excused, so are mere trespassers. If a servant takes his master's horse to ride & returns him, or taking one's bough & without leave & using it & returning it &c. 4 BC 232 1 Hale 504 — intent to deprive — covered by 4 Bac 4 BC 232. If someone takes personal goods from another, against his will, w/ h. he knows a felonious intent till a contrary appears Leach 238

"Personal goods of another" Things real, or savoring of a realty, are not a subject of larceny. Land cannot in its nature be taken

Lime Com. crust, ashes &c growing, or before severance, as they adhere to the freehold 2 Bl 232 Leach 108 2 Bac 470, Dent 57 1 Hawk. 141 Moore 86 Raw 509 512 i.e. &c. They are several & carried away by one continued act; for then they never were as movables, in possession of owner actual or constructive. Made larceny in many cases by St 4 Geo. 2 4 Bl. 233 2 Bac 470 1 Tar. 142

Doors, if several at one time & taken away at another, Where several be a fixt, or owner or any person Here when taken they are personal, in owners possession 4 Bl 233 3 Inst 108 1 Hale 510 Tar 141 2 Bac 470 1 Dent 157 Taking wool from a living sheep, or milk from a cow animo furandi is larceny Leach 181 2 M. R. 503

Reason for a distinction between pers.l chattels & things fixed to a freehold, may be; 1st as latter are not so easily taken & removed, not so liable to be stolen - ergo so severe laws not necessary, as to 1st 1 Hawk 142 4 Bl 232.3 1 Bac 470, 471 Different reason - Generally not so valuable

Fixtures of lime, cannot be larceny it is said, because they relate to & realty, are monuments of a freehold, & designed to be perp. 2 Bac 470 3 Inst. 109 1 Raw 55. 510 4 Bl 234 Tr 113 Leach. 13 yet Trover will lie for them

The cases must be in some measure in themselves alike one must have some prob. in them before a taking or cases in action cannot at C.L. be larceny - or be made in terrorem only. but merely on reason to some more ease viz. a rent of D.L. they are by ex. rent is not prob. in possession 4 BL 234 Fee 33a Dav. 42 2 Bac 70 - 1 Hale 38 con. - 2 Bac 70 because they not consider a reversion merely the same made larceny upon 2 Geo 2 c. 2 Bac 70 Hawk 42 No case for here

Tame animals reclaimed & not tamed or confined cannot be larceny at C.L. they are in nature ex. Deer in a forest - fish in an open river - bird fowls in ye natural state in 4 BL 235 Sect 503 Hawk 511 2 Bac 471 1 Dav. 143 Sects if reclaimed or confined, & may serve for food ex. Deer in a park - fish in a trunkle 4 BL 235.a 1 Hal 511 2 BL 393

But such animals tame nature as are not serve for food, are generally deemed of no value in y Law on y sect they be reclaimed, or confined taking them cannot be larceny at C.L. ex. Hares, monkeys, bears wolves &c 1 Hav. 143 2 Bac 471 3 Inst 109 Dav 511 2 BL 393 4 235 yet even in these cases a civil action will lie for y taking 4 BL 235

But domestic animals may be made to not serving for food. as horses mules &c & therefore are y subject of larceny to those wh. do serve for food - as neat cattle, sheep, swine fowl &c 4 BL 230.

Some domestic animals, not deemed reducible, on the law on subject ex. dogs &c; ergo taking not larceny at C.L.; but it may be a civil trespass 4 Bl. 235 2 H. 205 2 Rac 471 1 Bac 145

"Waifs" goods of wh. no one is the owner at the time of taking not subject of larceny ex. treasure-trove, wrecks, estrays, &c where they are seized by a person having a right 1 Hale 144 Hal 512 R 205 Here, at a time, a thg is in nubis, or rather in no one — it may become a chattel, or, in certain events be restored in a former owner

But: no title must be a prop. in some one at a time; yet, said, the owner need not be known by indictment for stealing a wreck of a person unknown 4 Bl 235 1 Hale 144 Cro 90 1 Salk 12 But in such a case it is said that, if a chattel, unless a man is proved to be in a stranger, it shall be presumed to a prisoner 2 Hale 290 8 Mod 249 2 M. N. 550 1 Hale 145 n. cites O.B. 1785. 352

Taking goods of a parish church larceny; of goods of a churchwardens (1 Hale 145) to steal a wreck from a dead body; it is a felony if done when it was not on 1 Hale 145 3 Inst 110 1 Le. 113 stealing or taking up a Dead body, not larceny but an indictable offence — a kind misdemeanor 1 S.N. 748 Cheshirde in some cases Sales, by St. Law

A person may commit larceny, in taking his own goods in certain cases, as, if the bailee goods to a carrier, & he & afterwards secretly & fraudulently takes them away, with intent to make a profit or revenue 1 Hav. 145 3 Inst. 110. Cro. C. 530 also if he sent his own messenger, w.th intent to cause the removal 4 Bl. 231

If goods are taken to S: & return of a person selling them may be indicted generally as for taking his goods 1 Hav. 145 a. S. 1785 ch 30
in an indictment for larceny, if a felonious taking is not found, a count cannot on a special finding, arraigt as Dept. for a Tres. ch 20 Jam. 1st Dec. 20
offences are generally diff.

Punishment; Simp. larceny whether Grand or petit, is a C. L. felony 2 Bac. 475 1 Hawk 90 1 Hav. 140 4 Bl. 95. 7 2 Bieh 1 Mi. R. 208 Grand: is a capital felony at C. L., but without benefit of Clergy; wh. however in many cases is taken away by Sts; as in horse stealing &c 4 Bl 237, 8 1 Hawk 12 3 Inst 58 2 Hav. 489

Petit larceny punished at C. L. with corporal & ignominious & chattels & whipping or other corporal punishment 1 Hav. 140 3 Inst. 218 1 Bac. 90 4 Bl 237. 95. 97. 530 2 Bac 475 not forfeiture of lands, not being a capital felony, & of course, no attainder Sec 4 Imprisonment in Cont. Hue Cont. 11 No distinction in Cons. between Grand & Pet Larceny

III Mixed Larceny, taking partly by means of trespass; usually rules, guide are same as simple. will apply to it. But it is also accompanied with a aggravation of taking from owner's house, or person or both of aggravated intention & felonious taking & carrying away, clear 2nd Rest. cases 4 BC 239 Harr. 151

1. Larceny from a house: this term may mislead as simple is not distinguished from it at C.L. either in its gen. nature or punishment, Harr 151 4 BC 239. 240 Hence it is commonly used in a wider sense, in a night season "comes most essential" but if then is not larceny, in modern 4 BC 240

But by Sts in Eng. a hence consequences of mixed larceny differs from those of simple Lar. in gen. Benefit of clergy being taken away from a former in almost all cases 4 BC 240 Harr. 151 Rec 70 & Ca. 3 Rest. 78 Lacr. 310 In Comm. not distinguished at all from simple Lar.

2. Larceny from a person: this is a term meaning more than or some violent assault & then the latter offence is called Robbery 4 BC 241 Harr. 14

Receiving or privately stealing from person (or not otherwise) is a felony at C.L.; & if above value of 2 pence, capital, but punishment at C.L. clergy is taken away by st. 8 Eliz 4 Bl 24. 1 Rev. 150. 1 Burn 52 Leach 133 2 Mr. R. 509 If of a value of 12d only or under not capital at C.L. 4 Bl 241 Foster 78 2 Burn 303 1 Rev. 151

Larceny, then in nineteenth century simple & privately stealing from a person is, if in a larger case there is taken away to the value of 12d — dealt in a former

When a violent larceny from a person or robbery is a felonious & forcible taking from a person of any of goods or money of any value by violence or putting him in fear 4 Bl 242 1 Rev 47

"Taking from a person &c" There must be actual taking — an attempt to steal not felony at C.L. 1 Rev. 147, 8. 1 Burn 532 3 Inst 70 4 Bl 242 1 Ro formerly holden to be so 4 Bl. 242 If a mere misdemeanor, incurring fine & imprisonment 1 Rev. 148 4 Bl. 242 Such attempt made felony in 14 & 15 Geo. 2 transportation for 7 years 1 Rev. 148 4 Bl 242 Leach 22, 251

If one takes a weapon or money in his presence by violence & putting in fear (tho not actually from his person) it is robbery 1 Burn 47 1 Burn 533 Leach 313, 315 East 1. 45 4 Bl 242 2 Mr. R 544 595 Foster 129 & 130 [illegible] sent to taking from my person Rev 47

If the receiver mistakenly pays ~~the~~ money to the decedent, a bill of interpleader lies against the person — so is it if receiving money in such fiduciary capacity from the person — but I will believe it also is in resistance of a bill filed for Rev. 47 Jurs 53 & M. N. 564 But a taking 2d. is not either direct from a donor or in his presence is not within a bill of interpleader — no bond to be given Rev. 247 & Jr. 1013

If several join to sell a mission from one or ten does from a vest, a certain act, and one refuses or is not able, the 3. & ten returns to get rid are well. — because of a certain to sell & assist each other. Rev 47. Rule 533. 7. 55 & M. N 595 The order to convey & was respondent person. We might call in this case

Redelivery after a taking is conditional does not mean a defence of taking it is still security — Rev 2-2 Rev. 47 Jurs. 50. 52 For a certain time does not require a continuance of a bond in another session Leach. 2 Rule 533 & M. N. 564.5

"Be mere or nothing in fees" The criterion 2d. distinguishes other rules from other cases — Fees there can be no Rolling 4 Bc 246 Rev 47 n 3 Jurs 58 pl. 80. 70 2 Rev. 494

"Violence" in the case denotes more than is implied in a mere act of theft, viz. is violence in fact of 2. or. There is violence in pocket picking but robbery requires more. It denotes violence or some other offered to a person; but it ought to be such as is calculated to excite fear. Lemon 1 Leach 44 n 4 Bl. 243 Foster 128

But actual violence not necessary — putting in fear suff. Cu. on death or torture 1 Hawk 149 n Foster 128 Leach 203. 4. 257 The violence or putting in fear must be previous or at least must not be subsequent. If one steals privately & afterwards keeps it by putting in fear, it is no robbery. 1 Hawk 48 n 2 Rol R. 154 1 Hale 534. 5

The violence must be possessed for a purpose of obtaining a money or taken. For where several finding one drunk & under pretence of carrying him home, drag him along pick him to a private place take his money — no robbery 2 M. R. 597 1 Hawk 148 n O. B. 1794 p 797 Hand cuffing a prisoner to extort money from him & then actually extorting it, is robbery Leach 250 2 M. CR. 597

As to putting in fear suff. of so much force or threatening, by word or gesture, as would as might naturally create an apprehension of danger 4 Bl 243 1 Hawk 149 n Foster 128 Leach 204

to such a threatening as is likely, considering the com. existence to excite an apprehension of danger to one's character or good name, is suff. putting in fear 1 Hale 144 n. 2 B 1785 p 245 1781 p 242 2 Mc. N 598 Sat 29 Leach. 194 257 The fear of personal violence not necessary Bearing with a drawn sword is suff. putting in fear so forcible extorting money under pretence of a sale 4 Bl 243 1 Hale 149 See id 60 That taking goods under legal process without colour or right & with intent to steal is robbery in common law is held Ro. Where is a clear — suff. cause of fear

"putting in fear" not necessary in a indictment Be violence suff. 4 Bl 243 When a offence is said to have been committed by putting in fear it is not necessary to prove actual fear 2 Bl 243 2 Mc N. 595 If taken of man in a cross lane without any colour of right is no excuse 1 Hale 509 1 Hale 149

Victim offering taking goods from a person without violence or putting in fear is felony of any kind — dist. not according to 1 Hav. 150 sed vide Ro. n. 149 n An indictment for robbery on a highway is not supported by ev. of robbery in a dwelling-house Highway not of a description Leach 53 2 Bav. 405 2 Mc N. 599 Punishment — a capital felony whatever value of a goods but clergyable at L.L. now ousted of clergy by Sts 23 Hen 8 c 1 & 3 & 4 Wm & M. ergo death in Eng. both principal & accessory before a fact 1 Hav 149. 50 n. 4 Bl 243 vide Cont. St.

Forgery

Forgery is a Crimen Falsi at C.L. it is a fraudulent making or altering of a writing to y prejudice of another's right 4 BL 247. Hav 335. 2 C.R. 2 Bac 555 Records, other authentic writings of a public nature as Parish Registers - Deeds & semble. Wills are subjects of forgery at C.L. Hav. 335. 8 2 Bac 558 1 Rol 80. 5. 75. 3 Mod 55 Str 90 1 Rol 55 Ray. 81
No decision at C.L. as to a Will. but now forgery at any rate by St 2 Geo 2 Hav 210 Vian 1 Hav 338 Rol 88 Cro E. 853 3 Bus 255 But since a time of Hav. it has been holden that fraudulent making use of any writing by wh. another may be prejudiced is a forgery at C.L. 2 L.C. 1451 Str 747 Barnard 10 L.R. 737 Fraudulent making use of an ~~amended~~ Bill of Exchange or unstamped, never is forgery 2 T.R 005 cases cited Leach 245 2 McN. 480.5 L Str 901

If one makes a false will in a name of another a forgery is complete, tho' supposed testator is living Leach 03. 391 2 McN. 483 So if is forgery if y scribe falsely inserts clauses not intended to be inserted by y Testator even tho. will is afterwards executed 1 Hav 336 2 Bac 567 Mo 759 Mod 91 Burn 170 Cy 288 Suppose y will never executed? Not forgery I conceive; because there would be no complete instrument 2 Bac 567 Mo 759 1 Hav 337
So writing an obligation, release &c over one's name found at y bottom of a letter &c 1 Hav 336 Burn 171 2 Bac 567 Here y name is not forged but y instrument is So making a mark in y name of another may be forgery Leach 51

If one inserts in an indictment a name of one as from it was not found This is an alteration 1 Kav 350 3 Mod 56 2 Bac 557 8 Mod 92 11 Co 93 a

Fraudulently altering a deed in a material part is forgery 2 Bac 257 11 Co 27 a Secus if in an immaterial part vide next page If one having found a bill of Exch & forges an endorsement to get it discounted - it is forgery 1 Kav. 210 n 2 L. R 1460

One may be guilty of forgery in making a deed himself in his own name ex. gr. having given a deed of Blackacre to B afterwards grants ye same to C & antedates ye deed This is fraudulent & to ye prejudice of B 1 Kav 336 Mo 555. 756 Mod 101 2 Bac. 508 (Dy. 285 Contra) But he who honestly writes an instrument in another's name & signs & seals it for ye latter in his presence, & by his direction, is not guilty of forgery, it is ye act of ye latter in law 1 Kav. 337

But making it must be fraudulent Ergo if ye officer changes ye word pounds into pence it is not in gen. forgery; it is injurious to himself only 1 Salk 85 1 Roy 99 Mo 655 Sal 375 2 Bac 507 1 Root 99 2 McM. 537 But ye security is avoided by it Sto Eq 224 11 Co 26 1 Root 94 1 Kav 337

Yet it is ye error of ye alteration if done with a view of gaining an advantage to himself - or to prejudice a third person would be forgery 1 Kav. 337 2 Bac. 507 Ex Obligee bound to assign his oblign to a bona fide creditr of his own, makes ye alteration to defraud ye creditr by rendering ye deed void

Towards a non-existence cannot amount to forgery tho' the intent be fraudulent or. omitting a legacy in a will is forgery where rose the Ct. it is so if omission of one bequest alters limitation or an. it may be forgery to omitting an estate for life to one remainder over or unintended rem. to an. is made to take effect in presenti - for the omission operates in favor of a latter, as a bona-fide devise in fee or a life est. to former 1 Bro 337 Mo 700 Roy 101

It is not necessary one should be actually injured indeed it is sufficient if from the nature of the act some one might be injured 2 Lev. 2 407.0 Ft 74 Bernard 10 L. R. 737. as where a civil right is never enforced - right to aver a gen. intent to defraud or to cause any act particular - more death. 74

It is not necessary to forge a writing should be published L. R 1467.0 St. 74 It is sufficient to a year a recent act in this case, an intent to make forging a name of a fictitious person may be felony Leach. 83. 182, 216

Suppose an alteration in a part immaterial if made by a stranger it is regularly injurious to himself only If by a stranger in ignorance of the effect (1 Co 27a) yet it is to observe it might in some cases prejudice another or. another might have a beneficial interest, would it be forgery if intent was fraudulent?

The act, variance between indictment and
evidence in ex. is cited Lewis 196 [illegible]
[illegible] the matter in question don't act on a word
transfer if it not [illegible] [illegible] is [illegible] [illegible]
insensible 100 p. 414

In a prosecution for forging, uttering, or passing an
an instrument - indictment must be convicted, if it does
not on its face appear to be an instrument described
Lewis 287, 302 Pet 80 n Lewis 204 as to effect
of words "of letter-following" see following, "is issued"
vide 2 Barr 147, 28 Cow. 224 L. R. 5 Q 231, 787
Lee 080 Jones 03. 83 The indictment offered instrument must be set out in express figures 12 St 1802
Lewis 287, 302 Lewis 2. 206

It is punished at L. L. by fine, imprisonment & pillory upon variety of Eng. Sts. more severely punished - in most cases with death 4 Bl 247, 50
Ros 115 vide Comm. 81.

Whether person in whose name a forged instrument is made is a prisoner vide Sea.
Cr. 05, 119 1 Mc 72 97, 50, 105, 17, 198, 0, 41

Perjury

It is a crime of swearing wilfully, absolutely a false in a matter material to issue or point in dispute under a lawful oath administered in some judicial proceeding 4 BC 137 3 Inst 164 1 Hawk 318 3 Bac 814

It must be a wilful false swearing i.e. not the same degree of accidental or unknowing error — it is not perjury if the swearer mistake or inadvertently. 1 Hawk. 310 3 Bac 814 5 Mod 350 10 Mod 195 Dal 519 3 Inst 164 4 BC 137 2 Man. 1835

The oath must be taken in some "judicial proceeding" i.e. in some court or before some officer having authority to administer an oath in some proceeding where it will be evidence or crime & not 1 Hawk 310 4 BC 137 Cro. J. 58 Mor. 28 2 Mod 258 Dalt 52 3 Bac 814

It is immaterial whether a court is of record or not 2 M & R. 470 Leach 583 2 Burr 1189 1 Hawk 310 Cro. J. 907. 185 200 5 Mod 348 Mod 41 2 Mod 257 2 Co. 91 Cro J. 12 3 Bac 814 Any voluntary or extra-judicial oath is not within Law 4 BC 137, Hawk 320 Mod 350. 70 2 Mod 257 Dalt 72 3 Inst 165

But perjury may be assigned on an affidavit or deposition tho' affidavit be is never in any case used or a part taking it 1 T. 235

Perjury is confined to wilful false oaths as opposed to deny some matter of fact — not applicable to promissory oaths — as oaths of office Hav. 320 2 Mod 27 Sent. 1st of the 8.x Interpretation of statutes in a misdemeanor Bac. Ab. Com. 4

But suppose a prudential or an false oath material to point in issue in judicial proceedings to not affecting a material issue ex. Re-examining a witness of one ~~[illegible]~~ as Baillie Lawson an immaterial question Hav. 320 Eng. E. 147

A party examined upon oath in judicial proceedings may commit perjury as well as an indifferent witness Hav. 320 2 Mod 70 1 Hav. 322 Mod 70 5 Bac 815 4 Com 145 Suppose in cross examination a false statement or evasive answer upon questions taken in his second answer consistently with the truth of facts he is not guilty. Mistake presumed Hob. 56 Hawk 5 2 Mod. 74

But a juror who swears his oath in the general sense is not guilty of perjury for he is not sworn to testify truth; his oath is but promissory It is to not the material matter a matter seemed to be true or not in fact — if witness did not know it to be true he is perjured, as he is sworn to those facts only where he has his knowledge Hav. 322 3 Bum. 294 2 Mod 77 3 Inst. 165 3 Mod 222 5 St. L. 537 4 Com. 147 Suppose he swears absolutely to what is not true Guilty of perjury? Yes Tomlin thinks not

The swearing must be absolute & direct. Swearing under such qualifications as "think" or "believe" or according to my best recollection" cannot it is said be perjury. 1 Haw 323 3 Inst 166 3 Bac 815 4 Com 147 2 Ld. If a witness does not know so (Cow. 220) for it has been held or com. testimony. Mere notes & c. he has received & it is perjury. Leach 301 2 Se. R. 855 1 Mc. R. 202. 3

The swearing must be to a material point. Impertinent & idle testimony cannot be perjury. 1 Haw 323.4 3 Bac 815 1 Hal 274 4 Com 147 Hob 53 Sal 14 Ency. 500 1 R. C. 78. 141 L. R. 258 5 Mau Sel. 8 Not if a false or fo circumstantial & not directly subsequent to a issue, tends to aggravate or extenuate damages, it may be perjury 1 Haw 323 Cro. J. 212 12 Co 101 2 Com. 98 3 Bac 815 It does to one point in que. his material to a point: viz. a point of damages

It is said if a immaterial fact be sworn to, it is likely to induce a jury to give a more severe verdict to a sustantial fact, it is perjury. 1 Haw 323 L. R 25 Q. B. Palm. 382 2 Lev. 1. 355 This point is however not well settled. 1 Haw 324

Swearing to one act another will be perjury when in truth it was with his staff is not sufficient to material to constitute perjury. 1 Haw 323 4 Com 147 The testing only is immaterial. Mere not a kind of instrument & consequently is?

It will not appear in what sense false or was material, suff. if be circumst. on trial so much it's necessary, y. you be the issue of a issue, Bart 325 n L. R 258 334 for it may be nec. material & yet not suff. to prove y finding of a different incident on a nonsuit & more w. material. Bart 325 n cites B.R. 1784 500

The notice in a former issue is good w. if a trial was had so as to introduce w. of what was stated 1 M. N. 458. 535 Also y course in Ch. perjury has committed must be set forth 1 M. N 283 Bay. 170 Non par Office which is an official writ in Ch. y perjury is assigned see 2 M. N. 458

It is not necessary y. y false w. should have been credited by Triers, nor of course w. any person should have been actually injured — the crime does not consist in a damage done to an individual but in altering public justice Bart 325 2 Leon 211 3 290 3 Bac 515
The word "wilful" is not necessary at C. L. in y indictment. Seems under Stat St. seem to "justify maliciously" sufficient Leach 590.1

Y. convicted hearing two witnesses at least are necessary. Seems there is oath is only 2 hearsays 10 Mod 195 C.B. 1784 98.2 1 M. N. 37 2 235 Non par. circumstance w. opinion of Lep. turning witness w. is given Ch. 2 M. N 471.4

Known or reg. of a person injured in a serious accident not justify as a defendant on ruling mos. Rev 325 L. R. 305 Hinchcliff & Beck Ct of E. 1804 Sp 1043 1104, 1124 1 T. R. 298 1 Ent 44 3 B. & R 27 308 7 T. R. 50 4 Co 20 559 4 Burr 2253 decisions contradictory Contrary in a Qu. Sess. Cr. 95. 115 1 Mc. R. 50. 105. 1 T. 38. 9. 141. 4 it seems he is not competent Sess Cr. 145. 8. n 4 Ellis 581

Two persons cannot be joined in a prosec. for Perjury offences not being joint Ch. 523. 870. 921 4 Burr 2452 Burnett 25 Com. 494 Rex. v. R. 5 B. & C. 98 Secus of subornation infra 2 L. Ray. 880

Subornation of Perjury

This is a offence of inducing another to commit perjury, - but a perjury must be actually committed Secus no subornation 1 Rev 325 4 Bl 137. 8 Hol 41. 57. 79 Geo 72 3 Mod 22 Cross. 58 2 Mc. R. 537.

For a punishment for perjury & subornation of perjury vide 4 Bl. 138 3 Inst 173 Hawk. 2 Rev. 2. For inducing one to commit perjury, if not been actually committed vide 1 Burr 325. 7. It is a misdemeanor vide 1 Mc. R. 220 3 Bl. 383

A variance in a pleading by a misnomer or addition of a letter is not material unless it makes an entire word ex. "lunderstood" for "understood" [illegible] ex. "ear" for "fear" Cowh. 220 15. 223 [illegible] 230 [illegible] 1841 384 [illegible] 137. 145 [illegible] 2 Mass. 511. 13

For a misnomer of Perjury & subornation of Perjury in Const Pride St. False affirmation & Quakers misnomer like a fifteenth St Const.

So a Crim. information of Const. to St & practice therein like Const St 12. 9. 30. 285. 33 37 413, 4 337. 7. 142 285 370. 58 L 1 Sec. 101. 49 Kirk 209

Offences are tried in Const as in Eng. in 1st counts in wh. they were committed Kirk 401 2 Gray 50 3 Mass 328 [illegible] 2 Mass. 503. 551 The rule holds however only as to crim. cases & not as to civil - actions qui tam Kirk 401

1. Bail in Criminal Cases

When one is arrested for a crime & brought before a Magistrate on a charge not cognizable by him, it is his duty to examine into it & hear & discover whether he ought to be bailed or not 4 BE 293 St. Comnt. But he has no right to examine a prisoner at C.L. & so not in Comnt. being no st. & warrant it in Comnt. Secus in st. 1 & 3. C. & M. 4 BE 297. 93 & 2 Sir 390

If on enquiry it appears clearly that offence has not been committed, or if charge against prisoner is wholly groundless, he is to be discharged 4 BE 295 2 Sir 389. Secus he must be committed to prison to be kept for trial, or if offence is bailable give bail for his appearance 4 BE 293 2 Sir 390 St. Comnt.

Bailing is accepting one to his securities on their giving security &c 1 Roll Abr 90 in all offences even felony whether (in C.L. or St.) wherein ought to be bailed (4 BE 297. & 2 Hale 127) unless it be prohibited by St.

2. At C.L. according to BL. all felonies were bailable even Treason & murder; according to others all except homicide so if a accused was let to bail in almost any case at any rate 4 BE 298 2 Inst 189 Com 458 1 Hale 127 Bac 220

3. But in St. Test. Bill. will in treason & many felonies is denied: further provisions are made on subject by St. 28 Hen 8 c. 12 Bac. Ab. 4 Bl 298 Hale, Bac 29 2 Hawk. 80 Cowp. 333 4 Bac 270 5 Mod 54, 0. 394, Bac 228

In prosecutions for offences amounting only to misdemeanors at C. L. Deft. may appear by Atty 1 McN. 50 4 Bl 375 where convict Deft. is not admitted to Bail unless prosecutor consent 1 East. 54 This rule has been dispensed with in Comnt McN. 59 So Comnt. L. law Stat.

It is a gen. rule that bail is incident to a crime new well a where exclusive of C. L. 2 Hl. 120 2 Hawk 63 But at C. L. the magistrate in the inferior Courts or principal do not appear a Magistrate is liable 1 Bl 207 Bac 227 2 Hawk. 42 In Eng. over serious crimes are required in case of Felony, Treason or inferior offences 1 Hawk 4 in Com 78 Sec 2 Rule 25 Ala 91

Refusing Bail where it ought to be granted is a misdemeanor in a Justice or Sheriff at C. L. & as such is punishable by fine or amercement The party injured has also his action 1 Com 479 2 Hawk 143 1 Bac 228 to Mod 179

Granting such, then not punishable as punishment at C. L. as a negligent escape, but fine & is also punishable by several Eng. 5 J. c. Hav. 46 205 Hal. 595 / Cro. 473 4 Inst 179

It has been decided in Conn. on a motn for Felony & Capt. min. out on Bail & the prisoner could not be recd. unless he is present in Court Root 90 Ru. Has not yet matter been decided M.C.M. 59 4 Bl. 575 Bac 85 in his presence necessary except in indictmt for Felony

If a prisoner prosecuted for a min offence is acquitted but moved on a trial to be guilty of an Mr & Ct. may detain him to be prosecuted for a latter Hack 300. 355

For Costs in Crimal cases in Conn. vide Count St in Eng. 7 J. R307 Fleet. E21 125

Practice in Connecticut

Chap. 1.

But first (as introductory) of the jurisdiction of our Courts of Law in civil cases

II Single magistrates as justices of the Peace de Single have original cognisance of all civil causes in vol. Magis- y title of land is not concerned if the matter in de trates mand does not exceed 35 dolls (St. C. new 41.) Kirb 202

But an appeal lies to the next Cy. Ct. if the sum demanded exceed 7 dols except in actions on notes or bonds vouched by two by two witnesses & given for money only (St C. new 41) 1 Sw. 107. K. L. 393

But an arbitration note for more than 35 dols & not exceeding 35 is not cognizc by a single justice it being not for money only but substantially an obligation to abide the award 1 Sw 108. 1 Root 99. 125 if for more than 7 dols appeal must lie I suppose

Qu. Whether a note for more than 35 dolls but endorsed down below that sum is within his jurisdiction? Decisions & practice both ways (Payne vs. Payne) 1 Root 98 3 Mil. 459 1 N. Y. T. R. 88

In analogy to the rule in case of appeals from C. Cts. it would seem that a note Lc for less than 35 dolls tho for money only & vouched ut sup. is not within his jurisdiction if either witness is dead or becomes interested by marrying one of the parties 1 Sw 108 1 Root 223. 316 See Kirb. 387

Qui tam prosecutions (i.e. certiorari process) are appealable in Deft (semble) however small the dam's demanded are. 2 Root 525 St C 142

If an action of trespass is brot before a justice &c for an injury done to land, the Deft (pleads title) the justice cannot try the cause Deft. then recognises in a sum not exceeding 67 dolls with one or more sureties to prosecute his plea at the next C & C. in the C. in which the land lies & "to satisfy all dam^s &c" St 435-6 See the St. that Deft. shall bring forward a suit &c

The justice must then certify the whole record to the C & Court St. C^t 435-6 1 Sw. 108 K L. 362 2 Root 54. 359

Deft cannot in this case alter his plea in the C & Ct. 1 Root 344.5. 458 If he does not pursue his plea in C. C. the default shall be recorded & sci. fa issues from C. C. on his recognisance St 436

If he does pursue his plea & judg^t goes vs him (in having failed to prove his title), for treble damages & cost St 426 2 Root 301

If he refuses to be thus recog^d before the justice his plea shall abate & on proof of the trespass judg^t must be vs him St 426

If the Deft in such actions plead the gen. issue & relies upon his title in ev. y justice may determine the cause as in other cases 1 Root 410 458. 549 See 2 Root 440

In actions brot for obstructing or raising the water of a river before a J.P. Defdt pleads a right to do the act appeal lies to C.C. & thence to S.C. 1 Sv. 108. St C. 30

Duty as 50 cts to be paid on every appeal from a J. must be paid at the time of making the appeal St 149 2 Root 11-12 St. Ct Fees Duties 182 Qu. Can y Record of y J. be contradicted to prove y fact (semb not) St C. 158. p 7 (No Duty now vide St C. May 1828) 1829

A J. may take a confession of judgt for a debt (with or without suit) to the amt of 70 dolls to be taken only from the debtor in person Record is made of y confession & Ext may issue Record must express the particular debt or duty e.g. by bond, note, book &c. St. C. 288 Nov. 1821 p. 148

In this case costs are allowed only for y justices fee unless there was an antecedent process & this must appear by the record 1 Sv. 108 Kirb 152 Nº 12 - 2 post

Not so of an arbitration note 1 Sv 109 i.e before y award 1 Root 328. 9. 2 " 443

May administer the oath prescribed by St. for poor debtors St. C. 221. 1 Sv. 109

If in an action before a J. a recog is taken for more than $15 & the original judgt exceeds yt sum a sci. fa. will not lie upon it before the J. but debt before C.C. (K.L. 393) Indeed no action lies upon it before a J. (Qu. Will not a fi. fa. lie before y J.? St. 39 & indeed in all cases to enforce his own judgts except as garnishee where y sum demanded exceeds 15 dolls St. C. 470

Note. A fieri facias is a judicial writ issuing regularly from a court in wh. a judgt has been rendered for the purpose of carrying the judgt into effect e.g. fi fa, garnishee, special bail &c Code 220

Tho' it lies in some cases after ren. & before judgt See St of avoidmt & amendt

It issues therefore only from that Ct in wh. the judgt was rendered or in which a original suit is depending Code 220 & regularly only from ut Ct. to wh. it is returnable except in case of sci. fa. fi fa garnishee for more than $15. on a judgt rendered by a J. In this case it is signed & issued by a J. but returnable to a C.C. St. C. 470

If a J. dc having rendered judgt dies or is removed before exn granted or satisfied debt lies on a judgt & in a debt or damts do not exceed $5 dolls & action may be brot before another J. dc, & no appeal, if it appears that sum before a C.C. But it must be brot within 5 years from a death or removal St. C. 29 R L. 398

A J. cannot try a cause out of a town in which he dwells except when there is no J. in the town in wh. the cause is to be tried who is qualified to determine it 1 Dev 199 Root 202 300-13 St. C. 25 15.6 Secus in crim cases 2 Root 357 St. C. 142

But Gov., Lt. Gov., assistants & judges of y. S. C. may respectively execute y office of J. throughout y State; but when acting as civil magistrates they have no other judicial power than justices, in respection same as to subject matter St. C. 247

Appeals from justices must be entered in y Doncastle C. C. within y 2d opening

Any appellee enter if appellant fails as in sup. court? (Post 2. 2) such is the practice (Lewis Wolcott) (He may now by St C. May 1828)

III Courts of Common Pleas

The several courts of com. pleas or cts have original jurisdiction of all civil causes (at law) not cognisable in single magistrates, so that all civil actions not cognisable ut. sup. are regularly commenced there cts / Sw. 101 K.L. 393 St. E 28

Of all civil actions (except ut infra) in wh. title of land is not in qu. & wh. matter in demand exceeds 15 dolls (now probably $35) but does not exceed value of $70 and of all actions on bond or note given for money only & vouched by two witnesses if the sum or in demand exceed $35 they have final as well as original jurisdiction; except that their judgts. may be revised on writ of error / Sw 101 St. E. 28. 127. 129 Kirb. 280 / Root 297

But an appeal to S.C. lies regularly from ye judgt in all cases in wh. y. title of land is in qu. 2 Root 440

And in all cases in wh. y value of matter in dispute exceeds $70

Except in actions on note &c ut sup. given for money only & vouched by two witnesses St. 28. 127. 129 / Sw 95 / Root 145

In an action for tres. on land demanding not more ye $70. no appeal lies unless title be made 2 Root 440 Ev. under y gen. issue not sufficient Said to be altered bot 2. h. 73 of —

But the right of appeal does not depend upon the sum demanded as damages except where the damages are presumptive as in cases of tort 1 Sev. 95 L. L. 395 & where in case of contract the damages cannot be ascertained without evidence extrinsic 1 Root 148

The rule is that if it appear from the record that according to the rules of ascert^g dams judg^t can't be rendered for a greater sum than 70 $ the title of land not being in que. no appeal lies I grant it will abate or the judg^t rendered in sup. court in such case may be arrested 1 Root 525 Ex. Pl^f in Book Debt avers that Deft owes $70 & demands $80, so on a note for $20 &c 1 Sev 95-6 Kirb. 280 1 Root 302 127, 288: 76 518 such a case dismissed from the Ct ex officio 1 Root 525 - 2 " 370 - 77 Kirb 35 2 Root 137: 42

So if the Plf in Book Debt declares on a debt for more than $70 & demands more yet if it appear from his own book on oyer that no more is due Debt by placing it on the record in his obj^n to appeal in Pl^f Ct may prevent appeal 1 Root 518 1 Sev 96 Kirb 278

In an action on an arbitration note for more than $70 if it appear from the record that neither the matter in controversy nor the award exceeded $70 no appeal lies 1 Root 27 298 1 Sev. 95-6 tho if the note is for more than $70 the note is prima facie appealable

In an action on note or bond for more than $70 given for money only & vouched by 2 witnesses if one is dead or become interested an appeal lies to Supr Ct 1 Root 223. 315 Kirb 387 con Nov 95 1 Root 500

In an action on a recept v an officer for not executing an exn no appeal lies whatever be the sum demanded St 385 1 Nov 101 Root 153 reers if it for not executing mesne process except when an action is brot before a J. P. or not executing an exn on a judgt confessed before him for more than 7 dols St 385

So in an action on a recept by an officer va receipts-man of personal prop. taken on exn St 385-7 Nov 101 reers if taken & recpt on an attachmt Kirb 40

So on a judgt rendered on award of arbitrators St 97. Nov 97

If a cause is not appealable by the St no agreemt of the parties can make it so ex agreemt to increase the demand by amendmt 2 Root 80 377-8

No appeal lies from a judgt by default unless there was a hearing in damts (Defl not otherwise supposed to be in Court 1 Nov 90 Kirb 17 1 Root 500 & in that case he can be heard in an Court appealed to only in damts 1 Root 500 Mag. 4 Root

But on judgt nil dicit appeal lies (Deft in Ct) 1 Sw 95. 1 Root 104 & the Deft may revive & defence in the Ct to wh. re 1 Root 558

No appeal lies from judgt of C.C. in a qui tam prosn for a crime It is in form & nearly in effect a crim. ~~xxxx~~ proceeding 1 Sw 95 1 Root 403 Kirb 269 K.L. 405

No appeal lies to an adjd Ct "must hep. Ct ie" Kirb 366 1 Sw 95 St 28

Appeal may be taken on a judgt on a plea in abatement without waiting for judgt in chief But if the Deft appeal from such judgt & does not make good his plea in the Ct appealed to costs shall be awarded v him on the judgt on the plea in abatement & Exn issue tho he should prevail on the merits St 22 1 Sw 269 K.L. 392 1 Root 567 & re cannot alter in the Ct above 1 Root 564

The appeal must be taken during the term in wh. judgt is rendered 1 Sw 95 St 28

It may be taken at any time during the term & it is prudent to move for it immediately after verdict or on any issue to the Ct after judgt secus an Exn may issue & a subsequent appeal is s. to be no supersedeas K.L. 390.8

Appeals to the Sup. Ct. must be entered in the docket above the second opening of the Ct or the appellant must recognize the whole costs to the time of entering. And he cannot enter at all after the jury are dismissed. 1 Sw. 95. 7 St. 28

An appeal destroys the judgt appealed from unless the Ct appealed to wants jurisdiction & even then I suppose the judgt is suspended till the appeal is quashed above R. L. 390

But if the appellant does not enter before the jury are dismissed the appellee may enter & have the judgt affirmed with additional costs St. 28 1 Sw. 95. 7 or he may sue on the bond not. The judgt rendered in the Ct above is a distinct substantive judgt except in case of appellee's entering

Qnty of B. payable on error or appeal from the P.C. St. 49 1 Root 475 2 Root 11 Kirb. 51 if not certified the appeal is void Kirb. 51 It must be paid at the time of taking the appeal or the appeal will abate 2 Root 11. 12 Qu. can the record of the Court be contradicted to move the fact? Sem. not St. 150

It has been decided that an audita querela is within the St as to appeals 1 Root 56

Either party may appeal if Pl. recovers less than his whole demand seems where the judgt is altogether in one's favor he cannot appeal Root 318 2 " 370 Or both may appeal & if either enters it is sufficient

If appeal is denied when it ought to be allowed error lies (1 Root 518. 56) So if allowed & the Court above does not quash it (2 Root 377 Ku. Mill error lie immediately on the allowance of the appeal I should think not as advantage may be taken in the Ct appealed to

If a cause is not appealed & motion for an appeal is made obj^n may be made to the motion in the Ct (1 Root 518) or the appeal may be avoided in the Ct to which it (Kirb 278 Root 302 127) Or if judg^t is given v him in the latter judg^t may be arrested (1 Root 525) or the cause dismissed by the Ct ex. off. (1 Root 525) & writ of error lies if the judg^t is v him in the Ct above

For the Equitable jurisd^n of Cts. see Powers of Chancery

The time allowed for pleading in abatement of an appeal is the same as is allowed for ordinary pleas in abatement (not) (1 Root 525. 564)

Explain silent appeals

Hereafter Court

has no original juris
diction in civil causes properly so called St 1 & 8. 1 Sw
94.5 It has indeed original jurisdic^n when a suit is
brot v an officer on the St (but this is not properly
a civil suit 1 Ch 4. 6. 3) or not execution a writ
return made to or an ex^n issued on it self St c. 391
1 Sw 97 2 L. at 251 Action may be brot at Com L. to
c. l. & this is the usual practice 1 Root 90

This Ct indeed issues writs of sci facias re-
turnable to itself to enforce its own judg^ts, but this
is a judicial not an original writ & it generally
grows out of the appellate juris^n of the Ct. St 28
Sw 97

It has appellate juris^n of many cases de-
termined in the Cty Cts, extending ante Div II its
appellate juris^n of causes decided in City Cts
is usually the same as of those decided by Cty Cts
(See Sts).

And an appeal lies ~~from~~ to this Ct from every
sentence order or decree of the Cts of probate 1 Sw 97
St. c. 383 For its equitable juris^n see Proceeding Eq

It has juris^n of all writs of error not for
the reversal of judgts rendered by Cty Cts or single
magistrates in civil & crim^l cases or of decrees
in eq^y passed by Cty Cts St c. 101. 2 1 Sw. 97

When on reversal Ct would enter his de-
cision in the S. Ct for trial he must do it in that
term in wh. the judg^t of reversal is rendered 1 Root
85

Its jurisdiction in cases of Decree Mandamus Prohibition & Habeas corpus are treated of under their respective titles St C 147

Note. if party may appeal from a judgt on a plea in abatement where he appeals it in Legislation ea without proceeding to a final judgt in the Ct below and if Ct after a judgt for defendt. enters pleads to the action instead of appealing he cannot in appeal from final judgt take any advantage in the Ct appl to of his plea in abatement Usage

IV. Supe Court of Errors

has jurisdn in all respects (incl) of all writs of error or bill of review of any judgt or decree of the Sup. Ct in matters of Law or equity; where the error complnd of is apparent on the record but has no recon of errors in fact St C. 120.7

V General Assembly

( ) has recognn on petition of cases in which no other Ct can grant relief provided the matter in demand exceed $25

Of the Proceedings by which civil Rights are secured in our Courts of justice

An action or suit is defined to be the lawful demand "more suit" 3 Bla 110

Jurisdiction of a suit in Court, is the writ mentioned which issue together 2 Jac 1 St. c. 24

The Writ

I The writ consists of all that precedes the statement of the plts claim, of the signature of the certificate on the writ and the recognizance where bail is one; the date is common to the writ & decl.n 2 Jac 1 St 1 Jac 1 555

In process contained in our Writs, is of two kinds 1st to summons 2nd to attach St c. 24 2 Jac 85 vit 5.1

By Process is meant the means of compelling the Def.t to answer in it; or in it, of holding him to trial 3 Bl 279 2 Jac 1 St. 1 Jac 1. 584

In Court as the decl.n issues with the writ it is not necessary to entitle the Pl. to judg.t that Def.t should answer (cases in Eng) 75. R 6 2 Jac 1 93 By St 12 Geo 1 a Com.n appearance may be entered in the Court. vacated or dest by Aff Tidd 125 (No 8. 3. 99)

This process contained in the writ is called orig^l or mesne process as contradistinguished from final or process of ex^n (3 Blk 279 1 Sw D. 589 Writs

In Eng there is a process distinct from the original writ 3 Blk 273. 4. 80 where the writ is a precipe, seems where a si accepit to secure an 3 Bl 274 2 Appx 829

The writ must be signed by a magistrate as a justice assistant Le or by the Clerk of the Court to which it is returnable & must describe the Court to which Le & the time & place of its session St 24 2 Sw 187 1 Sw. D. 588 St C. 34

A sci. fa. v garnishee on a judg^t rendered by a single magistrate must be signed by him even when returnable to the Cty Ct. St C. 470

It commands the officer or person to whom directed to summon (i.e. to give notice to) Deft to appear, or to attach his estate or person & him have to appear before the Ct &c St 24 2/2 Le 2 Sw. 187

It is generally directed to the Sheriff of Town in which Deft dwells or his county or else to Constable of the town Le St 24 2 Sw 187 St 38. 3,4 Directed

Constables in gen. have the same powers within their respective towns as Sheffs in their Cty St 384 1 Root 407

Mills

A Constable chosen & sworn in one town when
rechosen may serve sworn before he is sworn a second
time 1 Root 81 & 1 Ftcra. 625

A writ is directed to a Sheriff only or to
a constable only and a writ directed to the Shff
may be served by his deputy tho' not named even
a special deputy Kirb 240 Cro 403 1 Bac Ab. 339
Sal 12. 95. 5 Mod 221 Hob 12. 13 Bac Rep. 382
So in Eng.

Ordinarily the writ can be directed to no
other than one of the above officers (Barnes St
1804) no writ may be directed to an indifferent
person unless there are more than two or more
(Defts) deserved of different counties except where in
case of treason the Pltf or his agent or atty shall make
affidavit that he verily believes that the Pltf is in
danger or taking unless a St 1804 affidavit endorse
on the print & must be constituted before the deputa
tion is made 1 Sw. D. 580.8

The indifferent person need not make oath
to the truth of his return 1 Root 284.5 Secus
of a special Deputy Sheff St. C. 380

That the indifferent person is bondsman for
prosecution does not disqualify him, so as to
Shff's Constables 1 Root 328

The certificate of the magistrate as to the
necessity of directing to an indifferent person
is conclusive 1 Root 284.5 Kirb. 0 2 Sw 186

Holden once by the Sup. Ct that a direction to a Shff or an indifferent person was ill, but that a direction to Shff & an indifferent person would be good 1 Root 285 Qu. as to the last branch 2 Root 369 1 Sw. D. 589

If the return of a writ directed to an indiff. person is altered from one term or time to another the writ will abate. The necessity might exist at one time & not at another 1 Root 2d 369

A writ v a town may be directed to an inhab. of the town as an indiff. person 2 Sw 185

A writ directed to a minor as an indiff. person will abate 2 Root 519

A constable having begun service within the limits of his town (as by attaching property) may go into another to complete it (as by leaving a copy) Blake v Ramsey C.C. Root "service" see Root 407

A writ v a Deft of the town of A. may be directed to a Constable of the town of B & if he makes service in B it is good, but he cannot serve it in A. Root 409

All writs & declarations drawn by Shffs their Deputies or Constables except in their own suits shall abate St C. 387

A Deputy Shff cannot serve a writ for or upon the Shff since he acts for the Shff & under his authority

Writs

But one Deputy may serve a writ for or upon another so he may serve for or upon his Deputy Beaver v Parsons Com Pl. Lent 1803 Port Rep. D. 508 8 Sec. 258

Writs must be signed by a magistrate (it ante) but a justice can issue original civil process anywhere throughout the State in which he dwells 2 Ser. 187. St. C. 247

Signed

By St 1807 He may issue into an adjoining Co. such process if returnable into his own Co. does not so he mentions in civil causes. He may sign writs to be served in any part of the State State Ed. 814. 99. He may issue criminal process to bring criminal before himself. a process of exp. in civil cases throughout the State. so he may issue summons or corpus capias for witnesses in the first case throughout the State St. C. 247. 175 Ser. 182

A J. may sign a writ in favor of a town in which he lives of course I suppose v it 2 Ser. 87, 88 Root 175

Clks of Cty & Sup. Courts may sign writs returnable to their respective courts but to no other St. 24 1 Ser 100

According to usage writs of error must be signed by a judge of the Court to wh. it is returnable 2 Ser 271 Not to be issued without tolerable foundation for error So

Formerly the Clerk of the Sup Ct could issue mesne process returnable to the sup ct in any part of the State Qu. Now since there is a Clerk in each County

But the Clerks of both the Sup. & Cy. Cts. may clearly issue process returnable to their respective Mil's Courts St. C. 24. 129. 131 throughout their respective Counties

They may also I suppose issue mesne crim. process returnable to their respective Cts, to any part of the State i.e. in term time under the order of the Court

Formerly, Judges of the Cy Cts & justices of the quorum, could not issue original civil process out of their respective Counties afterwards enabled to issue such process to any part if returnable to their own Counties 2 Sw. 182 St Con 247 Now by a late statute they are authorized to issue process in all civil matters to be served in any part of the State whether returnable to their own or any other Ct St. 499

The Gov., Lieut. Gov., Judges of the Sup. Ct Assistants, & now Judges & Justices of the Cy Ct (at sup) can in all civil cases issue mesne process as well as final process that will run thro the State St. C. 247. 499

The writ describes the place in wh. Deft. dwells. These in ordinary cases only are the only necessary additions St. C. 212 & 2 Sw. 87 But where the office or civil character of the Pltff or Deft is the inducement to the action that must be added see "Pleadings"

Writs

On all writs in civil cases a duty must be paid at the time of their issuing, if returnable to a single magistrate 17 cts if c 67 L. 94 abolished if

Duty to be paid

Sess. ct. 31. c. 11 or L. 92 on Petitions of amalgamating nature to the gen. assembly 92

Amt of the Duty must be certified on the writ in words at full length or the magistrate signing it 150 seems void & the cause may be entered pro in Court without a rea 1 Root 505, 475 The writ cannot be amended by inserting the certificate even tho' the Plf offers to pay the Duty in Court 1 Root 505

And a writ once filled up v one person cannot be converted into one v another unless there is a further certificate of the pay.t of a second duty, & if it is the Court may ex officio dismiss it & tax costs for Deft 150

The same duties are payable on qui tam prosecutions 2 Root 526 Not on public pros.ns by informing officers &c Decided by Sup.r Ct that Pl. may take advantage of the want of a certificate of duty paid by writ of error after judg.t for Deft Ctno. 1804 Litch.d & Cy

Bond

On every writ of attach.t the Plf. must give sufficient security to prosecute his action to effect & to answer all dam.s in case he makes not his plea good St 24 1 Root 503

The security is to be taken to the adverse party St c. 28 as all bonds for pros.t are Ib hist. 378

This security is called a bond for prosn. It is given by way of recognisance acknowledged upon the back of the writ signing the writ at the time of its issuing St. 4 & 5 Anne Root 55 In the security may be recognised in foreign Pl. not residing there but no others. Bosk 95 2 T.R. 383, 4

Qu. Is the recognizance intended as a security for the party attached or for any damages occasioned by the attachment? or only for the costs? Not decided Pollock. Holden security for costs only (not) for costs it certainly is a security

But it has been decided that Pl's recog.e is sufficient if he is of ability to pay costs S.C. Fitzr. Ch. Ca. 798 & the com. prac. is to receive his recog.e This decision was founded on usage Root 55 & the Ct said that recog.e was security for costs only

However the object of the bond is to secure costs this practice is useless for the Pl is liable to costs without it, and if the object is to furnish security for the prop. attached the provision of the statute is defeated The latter I conceive was the object of the St (sed quere)

If however Pl's bond is insufficient a new bond may be ordered on motion to the Court to which the writ is returned Root 55

Lately decided that a bond for prosn on a blank writ was not good & that the writ must abate (because it could not be taken to the adverse party Ft. Sup Ct New York 64)

Writs

Necessary to have bond for costs must be taken on all civil law actions & costs be with writ process as the Defts body is attached or arrested, cases where a civil action is not by process of summons? Does the rule is the same as in other cases of summons

Bond for costs must be given by some substantial inhabitant of this State in every case in which a writ issues in favor of one who is not an inhabitant of this State St. C. 24 even tho the process is by summons

If the bond is not given in the above cases the writ may be abated

So security for costs is to be given by some substantial inhabitant be on the issuing of any writ if it appear to the authority signing the writ that the Pltf tho an inhabitant of the State is not able to respond the cost that may be recovered St 24

But in the last case I conceive that the writ cannot be abated in the Ct to which it is returnable for want of Bond, For the signature is conclusive ev. that the fact of the Pltfs inability to pay costs did not appear to the magistrate

But in this case the Pltf is on motion by Deft proof of his inability in the Court to which the writ is returnable, compellable to give bond with sufficient security or be non suited so if his inability accrued after the writ issued St. C. 29

But such motion should be made in a reasonable time if possible. Motion after the jury were embarrassed to try the cause decided too late Mitt

If the security taken is apparently sufficient at the time the magistrate is not responsible on its proving insufficient as if the bondsman fail Root 188. & this rule holds even if the Pltff's sole bond is taken Id

So on writ of replevin if the security is apparently sufficient, at sup. he is not liable except when the Pltff's bond is taken In this case if Pltff is not eventually able to pay the magistrate is at all events liable This cannot be apparently sufficient for it takes the Creditors security away i.e. the bond attached 1 Root 165 188, 50, 201 St C. 880 requires security to move and to answer such damages, costs, demands &c

On every writ of Error bond with surety must be given that the Pltff shall prosecute &c & answer &c St C. 162 R L. 410. 11 Pltff's bond not good

(No 2) Every party appealing from the judgt of one Ct to another must give bond for prosr with surety: appellants bond not sufficient Ct 28: 30

Mrs

The appellant & surety are bound that the former shall prosecute his appeal to effect &c

By this is not meant that unless appellant prevails the bond is forfeited but that it is if he does not proceed in the appeal. For the appeal destroys the judgt R.L. 390

If appellant does prosecute his appeal & fails the surety are liable for costs if they are not paid by the appellant for all costs before & after the appeal R.L. 390 2 Sw 173 That bondsman on appeal v. Deft is liable only for the costs consequent to the appeal Qu.

But he is liable for costs only & not for them if collectable from the appellant, It is necessary for appellee to take out exn & have a non est returned as to the appellants personal property R.L. 390 Qu said Root 315 that non est inventus is not necessary to subject the bondsman for Pltfs costs Qu. Then sci fa will lie on the recog for debt I suppose ~~Holden~~ (Root 315) that the return non est is not necessary to subject the Pltfs bondsman on an appeal Qu.

The proceeding is the same as in other cases of bonds to prosecute (inter) on non est as to the prin^al personal prob. the surety is liable K.L. 340. The imprisⁿ of the prin^l on the exⁿ will not discharge the bondsman Root 85.6 Indeed nothing but the payⁿ of the costs discharges him Ib

Writs

The giving of special bail does not discharge the bondsman of Deft on appeal (Mort) Nor does the bond on appeal when Plf. appeals discharge the bondsman for prosⁿ on the original process
Bondsman for Plf on appeal is liable for cost if Def. prevails tho' the Plf dies before the return of the exⁿ (Root 314) So I suppose e. converso if Deft appeals & dies (ut supra) when Plf prevails

Bonds for prosⁿ not within the St of Limitations St. L. 39, Root 503. 505 2 Sw 175

Death of Plf before judgⁿ discharges the bond for prosecution

A judgⁿ in favor of appⁿ is final as to the bondsman on appeal (Root 469. 10 L. 507 2 Sw 175.6

In transitory actions to be tried on susⁿ or 24 Ctr the writ is to be made returnable in that County in wh. the Plf or Def. dwells St t. 26 2 Sw 191 K L 344 (Root 90.1 St 384 (Root 90 Kirb 113 When title to Land is concerned the writ must be returnable to some court in the County in which the land is St 26 Sw 191

Time of return

Writs

Writ returnable to the Ct. it must be returned to the Clerks office on or before the day next preceding the first day of the term. St. c. 25 c. 2. 303

Later returns are however allowable if consented to by the parties, so without consent under extraordinary circumstances as if an accident befalls the officer on his way to the office or if he is suddenly taken sick just before the session R. c. 2 303

Writs & Petitions returnable to the Sup. Ct. must be returned to the Clerk before the 1st opening of the Ct. 1 Root 518

Writ returnable to the Ct. or Sup. Ct. must be made returnable to the term next following the date if sufficient time intervenes. Root 315, 16 decides it is error & if session void as in Eng. 3 Mil. 341 Pleasure 7. 1

Process & Service

When the process is by ~~attach~~ attachment of two kinds stem: attachment summons service is made by reading the writ in Deft's hearing or leaving an attested copy with him or at the place of his usual abode St C. 24.5 2 Sw 188. Root 497 1 Sw Q. 584

When two writs are issued one copy is suff 1 Root 475 Qu Must it be read the writ to witt if he serves it by reading?

If an officer makes service by reading & endorses service by reading the leaving of an entire copy will not abate the writ.

An acknowledgement of service endorsed by Deft's Atty not specially authorised to do it does not conclude the Deft Root 405.7 1 Sw Q. 595

One partner cannot acknowledge service in the name of the firm 1 Sw. Q. 589 Decided that petitions must be served by copy 2 Sw. 471 1 Sw Q. 589 Overrule now all petitions except those wh. relate to the title of land may be served by reading Writ of error may be served by reading Aug. 1864 L. & C. 4 No 277 — contra 1 Sw. Q. 589

On petn for new trial & writ of error if Def. lives out of the State service is made by leaving a copy with his Atty here 2 Sw 189

Imprisonment is resorted to only when by arresting the mov. or body of the Def. R.C. 24 2 Ia. 189
For the C.L. relating to arrests see "Arrests"

But it is well settled that service by reading or copy is sufficient to hold Deft to bail not cause of exclusion two officers may be made in a Root Ta. 128, 507 2 Ill 130, 145 Ellis v. 7.1

The ok. may not take Deft's bond if he cannot satisfy sheriff sufficient to answer the demand which is shown to accrue to the Deft 2 Ia. 189 R.S. 1. 400 R 24 secures C.R. -- secures it not sufficient

But the Ofk. ought not to be liable to Pltf or Def for omitting to take personal estate if he is advised to do so from it belongs Hunsiker v Robbins C.C. Ia. 1868

Ofk C.L. in Ofk. may summon a jury to ascertain to whom it belongs if he does not he takes or omits to take at his peril 4 T. R. 633, 645 2 K. B. 438

That the Deft has no cause of complaint for taking his body unless he tendered personal prop. to the ok. C.L. 200

Decided on this, it that in Ofk is found having taken the Deft's body more commitment to accept personal prop. it tendered & to discharge the Deft body 2 Ia. 189 Secus where Deft (R.S. 400) in fact imprisonment

No of arrests on final process. Root 120 St 34
174 Decided contra by Bd of eq. Root 124 but when
that the off may add 1 Petnot the cannot, old
prob 42 body St 2. 400

The Debtor's Land is also liable to be attached
but the is not bound to take land when he can find
the body, nor indeed is he justified as r the Pl
in so doing unless so directed by the Pl 2 Sw. 40 R.2.359

An arrest of the body may be made by an asst
of the Pl. in his Comty not out of it - tho' it may be
out of state Ch 504 Sec 20 Ang° Corp 87

If state prop. real or pers is attached the off. must
leave with the Debt or at his usual place of abode if
within the state a true copy of the writ with a description
of the prop. attached St St. 5 2 Sw 190

If real estate is attached the off must leave
a true copy at the town clerk's office within seven
days next after attaching the estate & before the time
for serving the writ has expired sec 13 it is not liable
r any other creditor or bona fide purchaser Sw 103
St 35

The transmission of the copy will not avoid the
suit, it is intended merely to give notice to other
creditors & to purchasers St 35. 2 Sw. 90

Personal estate attached is not liable to respond the judt. against the debtor or any other, unless exn is taken out & levied upon it within 90 days after final judt, the lien is lost unless where it is under a prior incumbrance & then it is not liable unless exn is taken out & levied within 90 days after the incumb. is removed St 35 2 Sev 189: 90 Lieb. 40

So the lien on real estate is lost unless the exn is levied upon it & the levy & appraisal be recorded within 4 months except in the case of a prior incumb. in wh. case the proceedings must be completed within 4 mo after the incumb. is removed St 35 2 Sev 190

A bert. prob. suffte to satisfy the exn has been seized on exn The Pltf cannot have a new exn. nor debt on the judt Bac ab. Exn Cb. 4355 Sel 323 2 Mod 214

Off. cannot attach real estate without entering levy on it Sec. Ct of N.H. 8th July 1808

If a person is in custody of an off. under an arrest, delivering to an off. an attachment v the same person for another cause is good arrest Cb 505 5 Co 89

When bert. prob. is attached the off. gen. & req. takes them into his custody & holds them for the purpose of levying exn upon them 2 Blk. R. 1218

What he can return them for this purpose no longer than till 90 days after final judt 2 Sev. 189 St 35

The off. may however & frequently does deliver the prop. to a receipts-man Kirb 40 & Sw 189 St C. 180 Same prac. on Ex^ns 1 Root 92 But the off. takes the rect at his own risk & is not obliged to do it in any case

The receiptsman is not bound by a promise to deliver the prop. after the expiration of 60 days from final judg^t & if he promises to deliver on demand he is not liable unless demand is made within 60 days be except in both cases where the goods are under a prior incum. in this case the trust remains untill the expiration of 60 days after the incum. is removed 2 Sw 190 Kirb. 40 1 Root 481

If then the promise is made to deliver on demand & no demand is made within 60 days the the receiptsman is bound to deliver the prop back to the Deft & on refusal is liable in Trover Kirb. 40 1 Root 481

In an action on such rec^t it is not necessary for the Off to aver in the dec. that the judg^t or ex^n remains unsatisfied 1 Root 92

Visable prop. within the State tho' belonging to a person out of the State may be attached & the attach^t will hold the owner to trial 1 Root 44 Even if the Pl. also lives out of the state In the last case must it not the action be brot in the c^y in wh. the prop. is 1 Root 44 So invisable prop as debts due to a debtor out of the state may be attached St C. 197. 9 & Sw. 189

If visable prop. belonging to an absent or absconding debtor is not exposed to view service is made by having a copy of the attach.t with the Att. agent factor or trustee in whose possession the prop. is and this service is sufficient unless the absent debtor is an inhabitant of this State in which case a copy must also be left at his last or usual place of abode in the State St 98 Kirb.d 1 Root 387

Same rule where invisable prop. as debts due the absent debtor are attached St C. 139 1 Root 387

But in all cases where the Deft is out of the State when the action commences & does not return before the first day of the term the cause must be continued to the next term & if at the 2d term the Deft. does not appear by himself or atty & it appears probable that he had no notice of the fact the Pl may continue the action to the term next following & no longer, at which term if he does not appear judg.t is to be rendered by default St C 25 K L. 993.4

But in all such cases ex.n is to be stayed till Pl lodge with the Clerk a bond in double the am.t recovered & with one or more sureties to refund to the Deft what he may recover of the Pl. by reversing or annulling the judg.t by suit to be brot within 12 mo after entering up the first judg.t St C. 25 1 Sw 335.5

If no bond is lodged the judg.t is erroneous 2 Sw. 277 1 Root 175 Once decided that the judg.t was void since denied 1 Sw 335 1 Root 175

Rule that judgment was filed on the 1st day of March 1890 be vacated till after the expiration of 2 mo. Ch. 25

In a case of the action is brought in Dist. Court or the state (at date) before a justice magistrate if there is no appearance for the Dfr. the action shall be adjourned for a term not less than 3 mo & not exceeding 6 mo & then without special matter-notice to the action shall come to trial

If judgt be rendered by the magistrate & the defendant waives the exemption the garnishee is to be summoned by the magr who rendered the orig. judgt unless he is removed or absent or otherwise before the scire is issued out in wh. case it may be signed by another magr. Ch 70

Judgt when the demand in the sec. court does not exceed $15 it must be made returnable before the magr who rendered the orig. judgt unless but such a term before another magr. But if the demand exceeds $15 it must be made returnable before the Clk of Ct in that Ct in wh. Plf or Def. is the resp. Ch 70

In actions on joint securities or contracts if all the Dfts are not inhabitants of this state service on such of them as are is sufft to hold them all to trial. In this case the suit is not continued of course but if any of the Dfts are served by the judgt thereon may be rendered on such joint liability Ch 25. 5

But if one of the debtors be out of the State
it can be levied of it so that service upon him by
leaving a copy at his last abode is necessary. (R. 25 188 Rev.)
the cause must be continued one term at least at same)
But in this case the St does not give recip or audita querela
St 25.1 If not continued final is erroneous. Sup
Ct Miss 6 Ala 2 writ of error lies. If the Dep is under the
case of a conservator the latter should be cited to appear
if not cited the writ does not accrue but time is al-
lowed to cite him Kirb 24

The Ofr may not break the outer door or enu-
ance of Debtor house to arrest him or take his goods
leave or inner door Kirb 5 Ala 48 2 Bac 832 Kirb 383
Hob. 92 Esp 84.5 Debt may be discharged in the Court
where Jud. & Ofr

Arrest on Sunday void St 29 Car 2 Sunday
so on day of service of any civil process Ch. 107 St 6
370.2 Bac 2 828 3 East 157

But one house is privileged only for himself
family & own goods If some other person or another's
goods are in it the outer door may after request
or refusal to arrest him or attach his goods 5 Co 93a
Cro E. 544

When a person under illegal arrest takes it upon himself to serve a civil process at the suit of another the latter service is good seems it an exception Lilk. E. 823 Ld Raym

When towns, societies, corporations or other communities are to be sued service is made by leaving a copy with the clerk or either of the select men or committee men St E. 1.

In Eng a prisoner in custody cannot be served with civil process without leave of the court or one of the judges i.e. in custody for an offence 4 J. 2 3rd H. 3, 29 Lev in Town

In suits not in sup^r or by Ex the time of legal notice in ordinary cases is 12 days i.e. the process must be served on Deft 12 days inclusive before the day of the Ct sitting On suits before single magistrates 5 days inclusive St 24 Feb 1888

But in suits by towns & other communities that not before a single magistrate service must be 12 days before sitting of the Ct St E. 118 Acts 1884 & Feb 1889.

And a suit or foreign attachment where whatever court intermediate must be served in some one of the counties, & such case may be at the Court next after the date of writ. Hilary Term 1 Geo. IV. 1820

It is suit to officer upon not executing a writ, or making a false return or not returning it. See the title of Sheriff 1 Bac 84

This rule will only of course in case not cont. under the St. & not in ordinary cases of suits at C. L. Lotage 1 C. 98

Qu. Whether it does not of right at C. L. since it seems that the Legislature have extended the provision to all suits & officers

In all these cases the day on wh. the writ is served is included in the computation of the time & that on which the ct sits is excluded

And if service is made on the last day allowed for service it must be completed before the evening twilight is gone to enable the off. to read the process

But time prescr. not to recover penalties are not within the above rules as to length of notice. These may be set in motion by process i.e. a warrant issued on a written complaint made to a magistrate 1 Lott 185

When they are not in the form of directions the usual notice in other cases is necessary & consider

If either, after the writ returnable, the Plaintiff's Conservator is not within any of the avoidances right their reasonable notice be given & if in the opinion of the Court the notice is too short the Court in its discretion will continue the cause or postpone the trial. Rule 74 Cantt.

One Ward cannot take advantage of a neglective service on his Ward. Coot 207.

Bail

of two kinds in Conn.
1st To the Officer 2d - Special Bail

I. Where the body of the Deft is arrested under an attach.t it is the duty of the officer to ask him bail that he may be forthcoming to the writ & officers oath to the Off. sup.t Bail for his appearance 3 R. 240 Tidd 105 This is Bail to the Officer

If then no bail is offered the Off. must regularly commit the Deft to prison for safe custody 3 R. 240 But a Deft cannot in Conn. be committed when arrested on mesne process without a mittimus issued by a magistrate St. 34 Civil Off. 104. 110. 218 Mittimus necessary because writ does not order commitment

When committed in Boston according to our stat. bail is offered (3 R.) the Bail bond thus taken is assignable as in other cases 2 Conn. R. 3. 4

But on St 25 Hen 6 in Eng. & in our St the Off is bound to accept such bail when offered & to discharge the Deft 3 R. 240 Tidd 106 St 34 not so at C. L.

To bail, or admit to bail, a person attached is to deliver him to his sureties on their giving security for his appearance 3 R. 240 & he is supposed to continue in their friendly custody instead of going to gaol. Ib.

The Plts right to arrest the body of the Deft on mesne process is founded on his right to take it on ex^tion but as the object is only to secure the Deft person to be taken on ex^tion the purpose is answered in contemplation of Law by putting him in custody of sufft sureties, a sort of keepers 3 St. 290

The security given is called a bail bond The obligors are called bail 3 St 290 2 Sw 190

The bail under our St must consist of "one or more substantial inhabitants of this State" of sufficient ability to respond the judgt that may be recovered St C. 95 2 Sw 190

The bail bond is conditioned for the appearance of Deft before the Court to which the writ is returnable St 189 2 Sw 190 Civil Off. 2.3

This bond being given the Deft must be immediately liberated from arrest St C 99

If Off. refuses to accept such bail when tendered he is liable to the Deft for false imprisnt 2 Sw 191 5 Bac 171 1 Root 120 if tender be before commitment But for false imprisnt case lies 1 Bac 200 2 Mil 313 1 Com. 289 5 Bo 582 Bro C. 141 or 196

& that it commence to run upon date of order
it can be returned on the attach^t no longer than 5
days after the rising of the Ct in which case if the
ex^r is not there upon him in the 5 days the arrest
must discharge him on req^t of the cost and Ld 33
2 Str 141

When Ptf is Ex^r is dead leaving no ex^r & his
relation medium on notice to take out adm^n the
Debt may be discharged on the court from 20 h. ex^r
issued 1 Sess r. 75 . Barn 255 Sto in Con. I presume

The Ofr. may if he sees reason the Debt
without Bail & if he arrests himself on the Ex^r the Ofr. is safe, but the proceeding is at
the peril of the Ofr. for having arrested the Debtor he
is bound to render him accordingly otherwise action
for an escape 3 Bl 290. 88 Lev 209

But the Ofr. cannot himself become bail for
he cannot give bail to himself . Mean action
therefore for an escape is risk on the Ofr. that he arrest
his ex^r and for assurance & that all is responsible he
is no defence Lev. 209 2 L. 888 4 Rec 462 5 Co 89
3 Bl. 290 Doug 450 or 455

Any undertaking otherwise than by bail bond
that a Debt arrested on mesne process shall an-
swer is void 23 Hen 6 17. 2. 418 4 11 109. 239

The Court if the off. takes insufficient bail he is liable to the Plf. on non est returned upon the exⁿ in an action for escape St 39 1 Root 54

Seems in Eng. the rule then is to rule the Plf first to return the writ & then to bring in the body & if he does not on the latter rule perfect bail above an attachⁿ issues v him to compell him to bail out & costs 3 Bl 291 Tidd 157 1 Bac 58 206 & Bac 401, 2. 1 H. Bl. 238 2 Mod 180. 1 2 Bl R. 1205

Decided in Court that the off. is not liable if he takes bail apparently suffⁿt at the time tho they should afterwards fail 1 Root 54 K. L. 388 Seems in Eng: 3 Bl 291 Tidd 155

The Bail may at any time on suspicion of principal's intending to escape take his body wherever he may be found & surrender him to the off. Has been holden that they may take him even on Sunday & surrender him afterwards tho an original arrest on that day wⁿ be void 1 Bac 205 5 Mod 231 7 " 77, 85 98 L. Raym 708 2 Sal 148 Cro. 605 Sal 252 Decided Contra 2 Bl. R. 1173 & the case limited to a vol. escape in this particular 5 T. R 25

But the Off. is not bound to accept a surrender, before the return of the writ it is optional with him Seems if bail above they may surrender at any time & the officer must accept 1 East 383. 390 T.R. 753 7 " 122 8 " 456

The bail have no authority to command assistance in taking their principal but they have a right to obtain it if they can & their assistants cannot compel or resisted

Received in Court that an off. having made an arrest may on an escape warrant retake the prisoner in another state 1 Root 107 Notes 249

The bond is negotiable both in Eng. & Conn. i.e. to the Pl. in the action Tidd 153 3 Bl 290 1 Wad 107 Stevens Root 281 So that the action on the bond may be brot after assignmt in the name of the Pl. Sec. 20 & 21 Hawes & Tomlinson Conn. Ed. Nov. 2d 1798 But in Eng. it is usually brot in the name of the Ob.

If the Pl accepts an assignmt of the bail bond he impliedly discharges the off. Tidd 153 Salk 99 1 Mes. 223

If the bail are suffict the Pl in Court is bound to accept assignmt in discharge of the Off, at least he cannot recover v the Off. after refusing to accept it, so if they were originally suffict at the time 1 Root 54 K L. 355 K C. 90 But must seek his remedy on the bail bond

If then the Pl. having refused to accept an assignment of the bond, sues the Off. for an escape it is a good plea for the latter that he took sufft bail, or apparently so & has offered to assign &c. & then the action turns upon the Pl. & fact whether the bail were sufft &c. Root 54 1 L. 388

Qu. Is it necessary for the Off. to shew that he must assign? or is it the Pl's duty to demand it? In it seems to imply that it is the Pl's duty to demand it. It c. 39 & that pleading a readiness to assign would be sufft sed Qu.

If the Off having recovered judgt on the bail bond obts a sci. fa. on this ex^n is not warned in auty saving the original debt & costs. The Ex^r may still recover on the sci. fa. the Off. fees & disbursement 1 Root 254

If Deft. cannot be twice holden to bail for the same cause of action Tidd 95 i.e. while a suit is pending on one arrest Deft cannot be arrested again for the same cause & he is court will discharge him Tidd 95. 6 Stra. 209. 5

Formerly if Pl. was nonsuited in the first action he could not afterwards arrest Deft for same cause Tidd 95 L. R. 69 Imes Mor Stra 439 209 2 Mod 351 But even now in Eng. on debt on judgt dep. cannot be arrested, if he was arrested in the orig. action Tidd 97 Stra 782. 1039 2 Wil 98 2 T. R. 759

In the condition of the Bail bond is that if Deft appear at the time & place & not depart without leave does not of course work a forfeiture of the bond for on the st. the bail are made liable only in case of principal's avoidance & the return of non est inv. on the ca. st. 2. 99 Kirby 204 382 434 2 Str 174

If then Deft is not surrendered in t.e. it is the Pltfs duty if he would subject the bail to take out a ca. & to use due diligence to have his body taken & if the Deft is surrendered on the ca. before non est inv: returned the bail are saved

However the principal makes avoidance (i.e. is not surrendered either in t.e. or on the ca.) & non est inv: is returned the bail are liable st. 2. 99 2 Str 174 Kirby 382. 434 Their liability extends to debt & costs 1. L. 387 The return non est inv: must be made I conclude both as to the person & personal estate not as to real estate For Pltf is not obliged to accept real estate in discharge or in stead of the body (ante)

The proper action to be sued on the bail bond appears to be debt tho' from the words of the st it seems that sci. fa will lie st 99 1 L. 387 2 Str 1185 Kirb 385 Que. 1 Root 281. 428. 9

In Eng. the action must be not in that Court in 28 days the orig. action was not 8 T.R. 52 & 303 1 Bur 1223 3 Wil 348 2 Bl. R 835 decided in Conn

Indeed an actual surrender of the principal on the ex^n is not necessary to save the bail for it is the duty of the off. holding the ex^n to make diligent search for him & if by the use of due diligence the off. cannot take him the bail are liable decided not liable 2 Sw 174 K.L. 387 Kirb 382:4

But it has been determined in a case where the principal shut himself up in an inner room & so threats prevented the off. from taking him that the bail were liable Sheriff^s avoidance de Kirb 382 2 Sw 175

The return of non est inv: must be fairly made or the bail are not liable If pltf by artifice procures such a return to be made unnecessarily for the purpose of subjecting the bail they are discharged 2 Sw 174 K. L. 387. Kirb 383. 4 (post)

It is clearly not necessary for the off. in order to subject the bail to delay the return till the expiration of 60 days for the purpose of finding the principal all that the law requires is that he act fairly & reasonably Kirb 383. 4. 4 Sw 174 K.L. 387 2 Sw 175

If the Sheriff's officers non est inv: returned the writ are based "actus dei &c" (Bac Ab. 7 Roll 340 Kitt 4)

Bail to the Sft. then may be discharged (Str 590)

1. By an actual surrender of Deft's body in Ct either on himself or by his bail (Bac 2 8 Roll 339 K L. 380 2 Str 175
2. By a surrender of his body on a supposed tender of debt personal noth. before non est inv: returned or being in a situation where he might be taken on the use of due diligence (2 Str 1730) or on his death (as will be seen hereafter)
3. (As will be seen hereafter) By Deft's procuring a entering special bail (see 2 Root 101 4th rule)
4. By Pltf's accepting a plea without special bail, or the words in custody &c
5. By Deft's obtaining final judgt 2 Str 1750 (rule 6)
6. Principal's Bankruptcy (see Bac 428)

A mere appearance in Ct without surrender & without pleading does not discharge the bail 2 Str 175 Kirk 43 (Does not a dilatory plea? St 90 infra)

(No 3.) If a act is surrendered in Court it is necessary for the safety of the bail that the surrender be entered on record. For no other than record evi. is admissible to prove the fact. 2 Sw 174 Kirb 18 Hob 210 Cro. Jac. 402 1 Sw 24 Ray 50 3 Burst. 192

On such surrender the Pl. must move the Ct. that Deft be taken into Sh's custody otherwise he may go at large & the Pl. loses the benefit of his arrest. R.L. 389 Lu. Is it not the duty of the Ct to order the Deft into C. ex officio? St 639 It is not the practice

If the principal is in custody for a crime the bail may bring him up by hab. Corp. to surrender him 1 Mil 218.

When the Deft whose body has been attached appears in court (does not enter special bail) he must plead if Pl requires it "in custody of the Ct" and if Pl accepts a plea not containing these words the Deft's body is discharged R. L. 388 2 Sw 175 Kirb. 494 and of course the bail. Lu. Does the rule hold if he is surrendered in Ct? The acceptance of the plea is a waiver of the Pl's right to hold the body 2 Root 101

But if the Deft: having pleaded "in custody" prevails in the original action he is not obliged on a new trial being granted to plead "in cus." again (Butler v Cooper 1 Ct. Of course he is not obliged on the new trial to give special Bail, for this is given merely to prevent his being taken into custody. The Deft has conformed the Law by surrendering himself at the return of the writ & on obtaining judg^t he was of course released according to Law

If Plf accepts in C.L. from a Deft whose body has been attached a plea not containing the words "in custody" &c. no special bail being given & Deft prevails Plf. cannot in S.Ct. require the Deft to plead in ans. or give special bail. He has waived the right by accepting the plea 2 Root 101

Same rule I conclude if Plf had prevailed in C.L. & Deft had appealed for there would be the same ev. of waiver. So I conclude the same rule wd prevail on a new trial by either party & whoever prevailed on first trial (causa que supra)

Appearance is the first act of Deft in Ct Tid. 121 Tal 8. In Eng. by St 12 Geo. 1. Plf. may enter a com. appearance for Deft Tid. 124. 6. ante

The Deft appears regularly by himself or Atty St C.L. parties could not appear in gen. by Atty 2 H. Bl. 600 Now by St West 2d they may Tidd 114 Co L. 128 a 121 a 1 Mod 244 2 u 89

Corporation agg. must appear by Atty Tid. 114 C.L. 66 b But sup St has decided that an Atty may not appear for a town Plf unless authorised by a vote of the town or by an agent authorized by a vote to retain an Atty. Infants (Plf.) by Guardian or next friend (defts) by Guardian Tidd 119 Le Co L. 135 Shf. cannot appear as Atty St 387 Root 258

III Special Bail

When a Deft who has been arrested is not into Court by an officer, or surrendered into Court by his bail, or by his own voluntary act, he may be admitted to Special Bail on which he is discharged out of custody R. L 385 3 Bl 290 – the bail to the Shff are of course discharged

This is called in Eng. bail "above" or bail to the action 3 Bl. 290 Tid. 150 And if surrendered he is not allowed to plead without special bail if Plff requires it St. C. 39

Special bail according to our statute must consist of "sufficient sureties" but it is more common to accept one surety St C 39 If the Plff does not accept the sureties offered the Ct decides upon their sufficiency by enquiring of witnesses

In Con special bail is given in open court only the sureties entering a recognisance in a sum that the Deft shall abide the final judgt St. C. 39

The recognisance is made payable to the Plff Rev. 385. 11 Decidue that the party for whose benefit the recognisance is taken may sue upon it whether he is or not Rev. 378
In Eng. it may be taken before a judge or commissioner out of court

If the recog^ce is forfeited the special bail are charged to satisfy the whole judg^t rendered & their principal

But is forfeited no otherwise than by the principal's avoidance & a return of non est inv. on the execution as in case of bail for appearance at Court 4 C. 39

In Eng. the bail are discharged by surrendering the principal before the return of the sci. fa. against the principal - Tidd 249. 7. 1 Mod 270. 2 H. Bl 593. 117 1 Str 74 2 T. R. 176 7 1 Bac. 210 Bost. & P

In Eng. an att^t of the pr. cannot be special bail to prevent maintenance & brokage Dougl 450. 453 n 1 Bos. & Pul 103 1 H Bl. 76 Secus in Conn.

In Eng. bail to the action i.e. special bail have for the purpose of taking their principal a right to go into his house as much as he has himself i.e. I suppose a right to break his doors 2 H. Bl. 126

Ulna that they may break & enter the house of a stranger in wh. he resides to seek for him, the outer door being open 2 H Bl 120 Qu. is it necessary that the outer door be open?

Do not the same rules apply to bail or appearance

Qu. Whether special bail recognised in one Term can take their principal by virtue of their bail piece in another?

Decided that they may in Sup. Ct as in the case Doe v Waldorp some years since K.L. 387 3 Dan 485 7 John 5 5 Esp. 170a

For the nature & form of a bail piece see 3 Bl 291 & form No 3 H.S.

It is merely an entry or memorandum of proceedings in letting Deft to bail

Bail may break an outer door to take principal 7 John

If final judgt is rendered v Deft the rule is that on principals avoidance & return of non-est inv. the special bail are bound to satisfy the whole judgt debt damages & costs K.L. 388 St. 239

The usual & most proper action v special bail is a sci. fa. w being founded on matter of record St. C. 39 2 Sw 173 Kirb 378 I suppose debt may or account

On the sci. fa. the judgt rendered v the principal is affirmed agt the bail with additional costs

But the sci. fa. or other process on the recog. must be served on the bail within 12 mos after final judgt, else v bail by the Ship are liable to the same limitation St. C. 39 2 Sw 175 2 Root 380

Decided that 12 mos are calendar mos not lunar 2 Root 380 gen. rule at C. L. contra K L 252 2 Bl 141 6 J.R. 224 Ch 143

The particular day on which judgt was rendered may be proved otherwise than by record 2 Root 380, 1

For no other entry is made in our proc. of the particular day on wh. judgt is rendered all judgts being entered on the first day of the term

If special bail is given in C.P. & an appeal taken the sec. fa. or other process must be served on the bail within 12 mos after the judgt rendered in the C.P.

The judgt of the C.P. in such case is not final within the meaning of the limiting clause in the stat. for it is destroyed by the appeal

In consequence of this limitation exn must be taken out v/ the principal & non est inv. returned within 12 mos (it seems) & it must be taken out in such season that the return may be fairly made ante ex gra. not on the day before the year expires

But according to Swift it may be taken out at any time which will admit of due diligence to take the principal 2 Sw. 175 Cook v Collins S.C. & C. of E. 1809

Suits on bonds or recognizances are not within this limitation 1 Pet. 305. 503 2 Sw. 175 (ante)

A recognizance for the prosn of an appeal by Deft does not generate the special bail in this case both condemnen are liable if suit goes v Deft for costs & the special bail on the return of non est. for dam & or debt also

Indem. ass. ft. recover back & paid to the Sp. may on judgt being rendered & recovered agt the in error satisfaction maintain an action agt their princ. ft. 30. 15 K. L. 390. 172

And if a cond. of indemnity is given they may nevertheless maintain an action upon it as soon as they become liable i.e. on the principal's avoidance & return of non est inv. & before suit brot (Sec. cov. to save harmless)
Note, it is no obj. to bail that they are indemnified by Deft or any third person Bost. Pub. 21. 103 except Deft's Attyg in Eng ante

And an erroneous judgt tho' reversed by a writ of error has the effect of a final judgt. or rather is deemed a final judgt within this rule. 2 Sw. 175. 6 1 Root 102 469, 569 seqs. in Eng. Es 195 So as to bond man on appeal by deft for bro's 1 Root 469

So a judgt in favor of Deft afterwards set aside by a new trial is final within this rule 1 Root 469 2 Sw. 176

Same rules extend to bond for prosecution gent 4 1 Root 469 Ra.

Every judgt in chicf then rendered for deft in subs Ct & every such judgt so rendered in the Ct or by a single magistrate & not appealed from discharges the bail

Special bail are also discharged like bail for appearance by a surrender of (Defts body or I suppose of sufficient personal property) on the Exn before non est inv. returned or by his being in a situation he might be taken by the use of due diligence or by his death before such return 2 Sw 173.5 1 Bac 216.7. 1 Rolle 336 Hutt 47

Special bail may be changed on motion if the bail have failed or for other reasonable cause 1 Root 575.6 So of bondsmen for prosn of actions on appeals (Ib)

Of Defence & Pleadings

The Deft having appeared & defence is nec^d having been special bail, or been taken into custody, is to make his Defence which in Court. is the next proceeding

In Eng. after bail to the action but in the first proceeding is the filing the Decl^n which may under certain circumstances be done within a year after suing out the writ 3 Bl 294, 5 Ji. R. 5 K & P. 435

By defence is meant a denial of the cause of action 3 Bl. 296 But judg^t may be rendered in several ways without defence as well as after defence made

II Default

If Deft does not appear at the return of the writ after being 3 times publickly called in Ct. he is said to make default of appearance & his default is recorded Ct C. 25

In Eng^d the Docket is called on the first day of the term & if deft does not then appear by himself or att^y & answer to his cause on being called (at sup) his default is recorded, & judg^t is entered up v him unless he appears on or before the second day & moves for a trial in which case the default is erased on his paying the cost to that time Ct 25

The Plf therefore cannot take out a r. on default till the third day of the term

In sup. Ct it is not usual to call the docket regularly therefore judg.t is not rendered upon default by that court till the cause comes to its turn for trial unless the Plf. moves that the cause be called

By rule of both Cts. however the Plf may at any time take judg.t by default notwithstanding appearance for Deft. unless Deft's Att.y will declare in open Court that in his belief there is a serious defence & unless he does this Ct will order a default to be entered

After default made Deft is considered in Court for many purposes 2 T. R. 351 Salk. 210 Mod. 40 Kirb 17. R. L. 439.5 Ex. ora. for the purpose of moving to be heard in damages, on which motion a rearing is to be had as to the amt of damages only Kirb 1 Nor 96 1 Root 500 So for the purpose of moving for arrest of judg.t Lu. Ray. 1274 R. L. 439

But after a default deft is not in Ct for the purpose of moving an appeal unless there has been a hearing in damages 1 Nor 96 Kirb 17 1 Root 500 (ante)

In judgt by default or upon demurrer damages are assessed by the Court. R.L. 27 R.L. 895 In Eng. by a jury of enquiry 1 Doug. 301 & Deft may always have a hearing in damages before the Court. But of late a jury has been dispensed with in certain cases in Eng. as in actions on Bills of exchange 8 T.R. 326 395, 416 11 B. 252. 528: 41 7 T.R. 473 4 B. 275 Ch. 194 1 R.L.P. 369 Doug. 301

In Eng. a default regularly admits nothing but that Plf is entitled to recover something 3 T.R. 302 Doug. 302 Ch. 195 Tidd 494 3 Mil. 155

On default suffered when damages are presumptive & no hearing in damages is moved by Deft. judgt goes agt him in Comm. for the whole sum demanded R.L. 215 Ex. gra. cases of tort generally & some of contracts

But if hearing in damts are moved the Default admits nothing more than that Plf has cause of action & he must prove to what amount he has sustained damage 3 T.R. 302 Doug. 302 So that default has se admits nothing more than Plfs title to recover something as in Eng. tho' if no motion is made for a hearing in damts judgt goes for the whole demand (vt sup.)

Where the dam^s are ascertained as by a written oblig^n for money the default admits a liability not to the amount of the demand set forth on the face of the obligation except so far as is diminished by endorsements i.e. when no motion is made for a hearing in damages R.L. 215

Same rule when dam^s are ascertained by reference to a known standard as in actions for obligations for collateral articles Here the Ct enquire of the bye-standers as to the value of the articles tho' no motion at sub. & subtract endorsements if any

But if such motion is made after default the Deft may in court prove payments not endorsed & denied by the Pltf see 1 in Eng. 3 T.R. 302

In Eng. there being no motion for a hearing in dam^s the rules which regulate the amount of dam^s in a default differ somewhat from ours, there if dam^s are presumptive a default admits only a cause of action, but on an obligation for money it admits that Deft is liable to the whole am^t deducting endorsements as in Court. 3 T.R. 302

Non Suit

If the Pl after the return of the writ is guilty of any acquiles or delays agt the rules of Law or the Ct he is adjudged not to have his action & becomes non suit 1 Bl. 295 & 6 He omits to procure bonds for prosecution when ordered by the Ct or to give copy of his book, deed, &c when required

The Pl may also voluntarily suffer non suit before or after defence made by permitting himself to be three times publicly called & not answering But this must be taken before verdict delivered to the Clerk 1 Root 571 Kirb 278 cases of retraxit But if the jury is returned to a 2d or 3d consideration he may become non suit before the 2d or 3d verdict delivered to the Clerk Root 571

In these cases Def on motion was inc to costs whether he has made defence or not. Not without motion. Motion must be made in the term in wh. non suit is suffered Kirb 339

In Eng. it is common for the Judge to order the Pl to be non suit while the cause is on trial if the Decl does not state or his evr does not prove a cause of action

But the Pl is not obliged to submit to order. On being called he may appear & then the cause must be tried by the jury 15 R. 175 Case in N. Y. of Pl recovering after non suit ordered & without danger!!!

After a non suit suffered under order of Ct Pl is deemed to be in Ct for the purpose of moving to set it aside as being agt Law 2 H. Bl. 355

Non suits never ordered in Conn.

After non suit Pl may sue again for same cause 3 Bl. 295

Retraxit

Judgt may be entered v. pl. upon a retraxit either before or after appearance made 3 Bl. 295

It Retraxit or withdrawing of the suit is an open & voluntary renunciation of it in open court 3 Bl 296

After retraxit in Eno. Pl cannot commence another new suit for the same cause 3 Bl 295 Secus in Connt.

Pl. may withdraw in any stage of a suit in wh. he may suffer a nonsuit, not after verdict delivered (ut sub.) nor after a return of arbitrators or auditors nor after the Ct has expressed the substance of a decree in Eq. tho no bill in form has passed 1 Root 552. 571 Kirb 273

After retraxit the Ct must move to wav judgt in costs or re waive the right, & must be made in that term in wh. retraxit is entered Kirb 269

If both parties fail to appear at the return of the writ on being 3 times publickly called the entry made in our practice is "no appearance" after wh. the cause is out of court No judgt rendered & the suit cannot be ~~revived~~ revived, without the consent of both parties Kirb 361 If it is bill of exceptions may be ~~brought~~ filed & judgt reversed

If both parties having once appeared fail afterwards to appear on being 3 times publickly called a discontinuance is entered & the cause is out of Court 1 Root 439

Defence is made in the Dep't Court 5 Rc 206
It is to the ind^e modes of defence i.e. eight kinds
of Pleas see Pleas & Pleadings

Time of making Defence

Pleas in abatement in Ct of Ctr. By Stat in Conn. all
- are to be heard & determined before the jury are impannelled. R 242 & the
issue in error case formed before that time

This provision has been found impracticable.
& the rule of Ctr now is that they shall be made &
tendered only before the rising of the Ct in P.M. of
the 2^d day

In Sup. Ct all original Pleas in abatement
must be made & tendered or delivered to the Clk
before the opening of the Ct P.M. of the 2^d day

Pleas in Avoid: which go to the merits not
within this rule as on pet^n in Ch^n, Pleas in abate:
of writ of error

Pleas to the action the Sup. Ct to be made
according to the old rule in the opening of the Ct A.
M. of the third day where the term is but one week
& of the 4th day where the term is longer 1 Root 584

This rule has never been strictly regarded
in practice & since the new organization of the Sup
Ct a rule is made every term as to those causes
which are continued for pleading in vacation

Changing & Altering Pleas

Under our Act.

when Deft requires that he cannot receive his plea in reasonable time allowed for making an answer to it Stat 342 & the Ct exercises a discretion to a certain extent in allowing the alteration 1 Root 425

But after Deft has demurred to issue & issue has been received upon it in any Ct he cannot demur to the declaration

But it is accordance that Deft on appeal, in the Ct appealed to may change his plea made in the Ct below of course & without costs Pent. Lange (Deft changing his "Ne" is the form in this case he cannot however go back in the order of pleading as from a plea to the action to a dilatory plea Chas & Pendleton Nor can he change a plea of "Nil" on on a plead for breach (ante)

If Deft chooses to rely in the Ct appeal to, on the plea made below there is no need of pleading it de novo in the Ct above

As to the alteration of the plea under the Act in y Ct. in which it was originally made it has been decided that Deft may alter even after trial has begun 1 Root 79 404 434 2 " 405 2 Nb 227 It saves a new trial for misplead-ing & the Act says whenever &c

A Repl made in C.C. to a plea in abate: may be altered in S.C. 1 Root 301 But the Ct will not allow Deft to alter in any case by making a new plea wh. is inapplicable to the action 1 Root 425

(Deft has been allowed to alter by pleading to issue after a dem argued & the record delivered to the Ct for judgt 1 Root 476 2 Nb 227 (Decided that Pleas in abate: may be altered 2 Nb 205

Issue & Trial

The issue being joined the cause comes to trial

Questions of matters of law are to be determined by the Ct. Matters of fact to be tried by the jury

Questions of law are however frequently involved in issues in fact especially in the gen. issue in our practice

On the other hand issues in fact may be agreed on with parties & tried by a Ct, not without such agreement Pt. 27

Issues in law are always determd by the Ct. Pt 27

After the trial begun to the jury the Ct will not stop the hearing & continue the cause without the consent of both parties 2 Root 25, 45

Our Cts do not on giving the charge to the jury direct them how to find nor give any opinion on the fact or law But if dissatisfied with the verdict they may in civil cases return the jury to a 2d or 3d consideration not to a 4th Pt C. 27 Kl L. 395 493 Kirb 179, 419

This may be done in Eng. but it is not usual as the judge directs the jury in the first instance

After the cause is committed to the jury no further argument or evd. can be heard Pt 28

The party who takes the affirmative of the issue in fact first exhibits his evd. & his counsel opens & closes the argument 1 Root 571

After the Def't has entered on his defence, the Pltff having closed his ev. it is interlocutory in the judge in Chy. to let the Plff into ev. on a collateral not before in controversy, to turn the verdict agt the merits of the principal Ca. or not East 504

On issues in Law the Counsel for the party taking the exception opens & closes the argt

On motions & interlocutory Questions only one counsel can be heard on each side without leave of the Ct

By St only one counsel is allowed to argue a cause even on the merits unless the demand is above $34 or the title of Land concerned St. 35 Rule not regarded much in practice

If a person is arbitrarily made Deft to prevent his testifying there are two modes by wh. the purpose may be defeated at the trial 1st If no ev. agt him the Ct. will on motion expunge his name & permit him to testify 2d If some slight ev. agt him he may on motion be tried first & on acquittal testify K L. 241. 432 Esp. 420 Ral 285 1 Root 489 2 H 282 / 420

As to oyer of Bills of Exceptions Dem.r to ev. &c see Pleadings For challenges to the jury see "New Trial" Arrest of Judgt &c

Verdict

The verdict of the jury on the issue closes it Com 1 R. 177.

Secondly every issue should be found affirmatively or negatively in the terms of it Not sufficient for jury to say that "find for Pltff" or that "they find all the material facts to be true" 1 Root 572

Yet if they find in terms the substance of the issue the verdict is good see Arrest of Judgt"

The Ct. may alter the verdict to make it formal where the substance is found 1 Root 78 K. L. 434.5

The Constable who waits on the jury may not be present while they are deliberating on the cause 1 Root 573 Ken. Will judgt be arrested for this cause? For Diffnt kinds of judgts see Plead & Pleadings

If jury give more damages than are demanded Pltff may remit the excess & take judgt for the rest K. L. 434 232 Esp. 304. 420 4 Bac. 25.5. 1 Root 88

Intst when recoverable see "Usury"
As to severing damts when there are several Deftts see action of Trespass & of Affnt & Bat. K. L. 208. 433 Esp. 537. 420

Costs

are regularly allowed in Const. as of course to the prevailing party in all civil actions except in 4 cases 2 Sw 258

1st They are never taxed for the Plf in error on the suit in error see Writs of Error St 151

2d When judgt is arrested for the insufficiency of the Decl. 1 Root 70. 572 Kirb 218 2 Sw 265

3d If Deft. in Book Debt fails to exhibit his book acct to be offset agt the Plf & afterwards brings an action agt the Plf to recover the book debt which he might have exhibited in a former action, & prevails he can have no costs unless he can show to the Ct that he had no knowledge of the former suit or was inevitably hindered from appearing & exhibiting his acct St 136 K. L. 131

4. On appeal from probate to Sup. Ct. if judgt is disaffirmed for mistake of the judge no costs like writ of error 1 Root 151 Secus if the mistake was occasioned by the fraud or neglect of appellee

In all actions of tres. or tres. on the case tried in any Ct or Sup. Ct if the damds do not exceed 7 dols Plf recovers no more costs than damds unless the title of land, the right of way or the use of water is in question St Tit 2 f. 66 2 Sw 268.9 2 Root 88. 9. 100

And in all actions of Asslt. & Bat & of Ass. Bat. & false imprisnt & of slander in wh. in the sup. Ct. less than $70 dols is recovd no costs accrued by the appeal are recovd by Plf. Except when Dft. appeals & then Deft. recovers full costs St. t. Tit. 2 f. 66.7. 2 Root 88. 100 2 Sw 268.9

Trover for exn 41 £ exn delivered to Plff upon suit brot damages 12/ & full costs allowed 1 Root 136

Whenever Deft appeals from a judgt on a plea in abate: & does not support the plea in the Ct appealed to costs shall be taxed agt him up to the judgt on the plea in abate: & exn shall issue for them however the cause may finally issue St 22 & Sw 269 To discourage frivolous exceptions

After a writ has been abated & amended if Plff obtains final judgt he recovers no costs which accrued before the amendt except writ and ½ of fees Kirby 89 & Sw 269 & L 391

On appeal from Probate to sub. Ct by minor the decree being affirmed costs were taxed vs the minor 1 Root 325 Qu. should not the cost have been taxed v the guardian see "Parent & Child"

On motion in arrest of judgt if verdict or is awarded full costs are taxed in the final judgt 1 Root 373

If in an action v several one Deft. obtains a verdict & the Plff prevails v the others the former is entitled to costs But he can have only one Attyfee taxed & only his proportion of the Ct & jury fees 1 Root 480

If two Defts are joined in a suit in which they cannot be joined & prevail costs are for each (at sup.) seems if the joinder were proper then there would be but <u>one</u> bill of costs taxed for both & travel & attend.ce for <u>one</u> only

And if two or more Plffs recover in a suit only one bill of costs is taxed & travel & attend.ce for one only

On petition for new trial if respondent is cited to appear at the term to wh. the Petition is returned & the petn itself is addressed to the Ct at another term the respondent is entitled to costs. He is in Ct under the citation tho' the petn is not regularly before it 2 Root 31

In qui tam bros.ns if Deft is acquitted he is entitled to costs as in civil actions 2 Root 135

On judgt by confession the mag.e can tax costs only for his own fee unless there was an antecedent process & if there was the fact must appear upon record to justify the taxation of any additional costs Kirb 238. 152 / Sw 158 ante

Costs are regularly taxed in Ct by the judge tho' it is said they may be taxed out of Ct / Kirb 251

On judgt upon plea in abate: costs are taxed in Ct & Ct only up to the 2d day of the term Because the St provides that such plea shall be heard & determd by that time

The Attly of the prevailing party has a lien upon the costs & may require the Ct holding the exn or the adverse party not to pay them to his client Ex 584 Dana 220 2 Bin R 280 2 H. Bl 440, 587

But this lien is subject to any equitable claim of the adverse party as to a set off 1 H. Bl 24, 128. 207, 537 K & L 495

The party amending is to pay costs at the discretion of the Court; St 22.5 342 post

For modes of setting aside judgts see "Writs of Error."

As to Exn see "Exns" Cts may remand or supersede exns & other writs improvidently granted Cow 183 4 Bac 888

Amendments (No 41)

Formerly at C.L. amendments the allowed before the record was made wh were merely not permitted afterwards except in the term in wh. the act recorded took place 3 Bl 407, 411 1 Bac 89 8 Co 156.7 4 Bac 2507 Laws on Plead 7. 16-23

At present amendts are more liberally allowed in Eng. at C.L. & where justice requires it they are permitted to amend at any time while the suit is pending i.e. before final judgt not afterwards 3 Bl 407

Thus now all formal mistakes in Eng. are aided by the Sts of which are numerous the earliest of wh. is that of 14th Ed 3 (3 Bl 407. 8 1 Bac 90.5 5 Le 2 Bur 1098 Laws on Pleadts 16-28

Those Sts extend in genl to artificial & formal mistakes & not to substantial defects or mistakes 1 Bac. 96.7. 101.2 Hob 118 Cro E. 644 8 Co 156. 159a

We have two Sts on this subject The first provides that no writ pleading, judt, or proceeding shall be abated suspended or avoided for any kind of circumstantial errors mistakes or defects if the person & the cause may be rightly understood by the Ct St 22. f2

This provision is however too genl & vague to admit of any effl application Pleas in abate: & special Demurrers for formal defects are frequent & successful

Our old St provides that when on plea in abate: judgt is rendered in favor of Deft. the Plf shall have liberty to amend his writ on payt of cost to the time of amend: This St extended to formal defects only

Decided that a motion to amend under this St was unnecessary Kirb 5.6

By St of 1794 the several Cts of Law & Eqy may at any time permit the parties to amend any defect mistake or informality in the writ decn pleadings or other parts of the record in civil causes upon payt of costs at the discretion of the Ct St 23 2 Sw 227. 8

This Act differs from the old in many particulars

1st Lower Ct. motion to amend is necessary "Ct may permit it" seems under the old

2d Under the old that the writ only was amendable. Under the new any part may be

3. Under the new amend: may be made at any time by Pl even before plea made & by either party at any time afterwards 1 Root 505 2 " 57. 119

4. On amend: under the old Pl. was obliged absolutely to pay the legal costs, Under the new the allowance as well as the amt of costs is holden to be discretionary with the Ct (ante) 1 Root 505

The sub Ct. lower allow the taxable costs agt the party amending almost universally
The Cy Ct in Lnd Cy seldom allow any

5. Under the old the formal defects only were amendable (ante)

Under the new any species of defect may be amended except where the process is coram non judice or otherwise void 2 Sw 205 Ex. No certificate of duty paid 2 Pr. Ch.

2dly where the amend: proposed would change the nature of the action 1 Root 505 2 " 148, 274, 492
3dly where the writ &c is not strictly void the proposed amend: would not aid it &c in sup.te service
Post 2 Iv 205

It has been allowed to raise the damages demanded Ellis v Clark N. H. C.t Jan 1800
Fairfield C.t Aug. 1803 S.r &c permitted decl.n to be amended after judg.t upon demurrer that it was insuff.t 2 Mil 294 1 H. Bl. 49. 50 7 T R. 132 1 Bos & P 304
2 P. Wms 300 Mich.o 15 Com 204. 316. 498

Rep.n amended after verdict Cro Eli 607 Tina 521 8 Mod 370

So gen.l indeb: aft.r changed to special Ellis v Clark sub a

One of 2 Pls permitted to amend by erasing the name of the Ex Pl 1 Root 85

Writ of Error misdescribing the ct below amendable before Ella 1 Root 551. 115. 173

Writs of regularity not amendable in Eng. Hob 244 Bl 49 Carth. 390 2 Bac. Ab. 202. 209 5 Mod 18. 59
Writ of Error in Com. is in form an orig.l writ issued in Eng. 3 Black.k

After amend: of the writ Plf. may plead in abate: de novo & so as often as amend^t are made for from the time of amend^t: it is a new writ 1 Kirb 5.6 Reeste 7.4

But when a party has leave to amend he may amend at once all amendable defects

The record of a justice is not amendable on writ of error unless he has some written minutes by which to make the amend^t 1 Root 178

So in Sup. or C^t-ts mistakes of the Clerk cannot be amended after the term is past unless there are written minutes cit. ibid. 1 Root 572 Seems during the term

Proceedings in C^t are amendable as at Law 1 Root 472 2 474

Deft allowed to amend his plea after trial resum to the jury 2 Root 405

The Stat. of amend. does not extend to crim. proc. nor to qui tam forthwith proc. 2 Burr 1099 1 Bac 95. 6 Sal 51 Cro C. 114 Cro J. 44 7 TR 55

Qtt com. L. no diff. between amend. in civil & crim. cases 4 Burr 2507 2 Burr 1099

If the statem. of an extrinsic fact will make the writ good it may be amended Thus where the defect in the writ is extrinsic it may be amended if a statem. of the truth will make it good Ex Misnomer, misdescription &c

But if such statem. will not aid the writ it is impossible to amend Ex. Insuff. service in fact tho' the endorsement in sorts good Here no amend. 2 Str 205 So of, pending a former suit for same cause &c Ib

So if return of service is insuff. on the face of it yet suff. in fact the writ may be amended by stating the truth R. L. 391 2 Str 205

But where the writ is void it is impossible on the nature of the thing to make it good by any alteration &c. for the signature of the Mem. to certify of date said be insertion in the ex. &c

In some instances a verdict may be amended by the statute &c. If on a deter. concerning costs and counts no ex. is given on the trial & on inq. find a gen. verdict for Pltf it may be amended by the jurors minutes & entered on those counts only to wh. the ex. applied Doug. 381 1 Bos. & P. 424 Secus if some ex. was given on the trial counts 1 Ld. 102 2 Burn 1778 where a venire de novo must issue

So a mistake by the Clerk in entering a verdict may be amended Ex in the Dam. found &c Stra 1197 1 Bac 101 Cro. E. 112. 577 Ld. R. 331 Stra 514 Bac 53

But a special verdict may be amended as where a circumstance deemed by the Ct material & clearly proved is omitted. Stra 513. 515 1 Lev 134 1 Bac 101 Bac 47. 8 4 Co 52 Cro E. 144

But in a crim. case a verdict whether gen. or special is said not to be amendable Bac 53 1 Bac 101 Ld. Ray. 141

Qu. See 1 Ill Mod 84 Doug. 362

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